
Final
Consultation Protocol for *Iwi Kūpuna* Discovery
During the Archaeological Inventory Survey for the City
Center (Construction Phase 4) of the
Honolulu High-Capacity Transit Corridor Project
Kalihi, Kapālama, and Honolulu Ahupua‘a
Honolulu District, Island of O‘ahu
TMK: [1] 1-2, 1-5, 1-7, 2-1, 2-3 (Various Plats and Parcels)

Prepared for
The City & County of Honolulu
And
The Federal Transit Administration

On Behalf of
PB Americas, Inc.

Prepared by
Hallett H. Hammatt, Ph.D.
Cultural Surveys Hawai‘i, Inc.
Kailua, Hawai‘i
(Job Code: KALIHI 19)
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O‘ahu Office
P.O. Box 1114
Kailua, Hawai‘i 96734
Ph.: (808) 262-9972
Fax: (808) 262-4950

www.culturalsurveys.com

Maui Office
1860 Main St.
Wailuku, Hawai‘i 96793
Ph: (808) 242-9882
Fax: (808) 244-1994

Management Summary

Reference	Consultation Protocol for <i>Iwi Kūpuna</i> Discovery During the Archaeological Inventory Survey for the City Center (Construction Phase 4) of the Honolulu High-Capacity Transit Corridor Project Kalihi, Kapālama, and Honolulu Ahupua‘a Honolulu District, Island of O‘ahu TMK: [1] 1-2, 1-5, 1-7, 2-1, 2-3 (Various Plats and Parcels)
Date	October 2011
Project Number (s)	CSH Job Code KALIHI 19
Investigation Permit Number	The fieldwork for the City Center archaeological inventory survey (AIS) will be carried out under Cultural Surveys Hawai‘i Inc.’s (CSH) archaeological permit number 11-17, issued by the Hawai‘i State Historic Preservation Division/Department of Land and Natural Resources (SHPD/DLNR), per Hawai‘i Administrative Rules (HAR) Chapter 13-282.
Project Location	The proposed Honolulu High-Capacity Transit Corridor Project (HHCTCP) extends approximately 23 miles (37.0 km) from Kapolei in the west to Ala Moana Center in the east. The focus of this consultation protocol is the eastern-most 4.3 miles (6.9 km) of the overall HHCTCP project area. This consultation protocol area includes all of Construction Phase 4 (City Center) and the eastern-most portion of Construction Phase 3 (Airport) of the HHCTCP. This area extends east along the southern coast of O‘ahu from Kalihi Stream on Dillingham Boulevard to Ala Moana Center on Kona Street and is depicted on the U.S. Geological Survey 7.5-Minute Series Topographic Map, Honolulu (1998) Quadrangle.
Land Jurisdiction	The consultation protocol area, constituting all of the HHCTCP Construction Phase 4 (City Center) and the eastern portion of HHCTCP Construction Phase 3 (Airport), is primarily located within existing road rights-of-way owned by the State of Hawai‘i or the City and County of Honolulu, including Dillingham Boulevard, Ka‘aahi Street, Nimitz Highway, Halekauwila Street, Queen Street, and Kona Street. Many of the support facilities along the project corridor are located on adjacent privately-owned lands.
Agencies	City and County of Honolulu (City); Honolulu Authority for Rapid Transportation (HART); SHPD; U.S. Federal Transit Administration (FTA), and the Advisory Council on Historic Preservation (ACHP)
Funding	FTA, City
Project Description	The project purpose is to provide high-capacity rapid transit in the highly congested east-west transportation corridor between Kapolei and Ala Moana Center via a fixed guideway rail transit system. In addition to the guideway, the project will require construction of transit stations and ancillary support facilities. Nine proposed transit stations are within the City Center consultation protocol area, including: 1) Middle Street Transit Center

	<p>Station; 2) Kalihi Station; 3) Kapālama Station; 4) Iwilei Station; 5) Chinatown Station; 6) Downtown Station; 7) Civic Center Station; 8) Kaka‘ako Station; and 9) Ala Moana Center Station. Project construction will also require relocation of existing utility lines within the project corridor that conflict with the proposed project design. Minimally, land-disturbing activities would include grading of facility locations and excavations for guideway column foundations, subsurface utility relocation and installation, and station and ancillary facility foundation construction. The vast majority of the area of disturbance will be due to utility relocation and road widening.</p>
Project Area of Potential Effect (APE) and Acreage	<p>The HHCTCP APE for archaeological and cultural resources is defined in the HHCTCP final Programmatic Agreement (Stipulation II.A.1.) as all areas of direct ground disturbance. HHCTCP project engineers estimate that the area of direct ground disturbance for this eastern-most 4.3 miles (6.9 km) of the overall HHCTC project area is approximately 604,289 square feet or 13.87 acres.</p>
Historic Preservation Regulatory Context	<p>Due to federal (FTA) funding, this project is a federal undertaking, requiring compliance with Section 106 of the National Historic Preservation Act, the National Environmental Policy Act, Section 4(f) of the Department of Transportation Act, and Federal Regulation 36 CFR part 79 regarding curation facility standards. Through the Section 106 historic preservation review process, the project's lead federal agency, FTA, has determined that the project will have an adverse effect on historic properties currently listed, or eligible for listing, on the National Register of Historic Places. The Hawaii State Historic Preservation Officer (SHPO) concurred with this undertaking effect determination. To address the undertaking's adverse effect, a Programmatic Agreement (PA) was executed January 18th, 2011, with FTA, Hawaii SHPO, the United States Navy, and the Advisory Council on Historic Preservation as signatories. The project is subject to historic preservation review under Hawaii Revised Statutes (HRS) Chapter 6E-8 and HAR Chapter 13-275. Burial treatment and related consultation follow HRS Chapter 6E-43 and HAR Chapter 13-300. Following HHCTCP PA Stipulation III.B.1, the City has prepared an archaeological inventory survey plan (AISP) for City Center based on the available City Center preliminary construction design (Hammatt et al. 2011). This AISP will be implemented and the investigation results will inform subsequent interim and final City Center construction design so that the project's adverse effect on archaeological cultural resources, including <i>iwi kūpuna</i>, can be avoided or reduced.</p>
Document Purpose	<p>This consultation protocol was prepared to fulfill HHCTCP PA Stipulation III.B.4, which requires that the City, in coordination with the O‘ahu Island Burial Council (OIBC) and other concerned parties complete a protocol for consultation regarding treatment of any <i>iwi kūpuna</i> [Native Hawaiian human</p>

	<p>remains] identified during the HHCTCP AIS investigations for the City Center. As a result of consultation discussions, this consultation protocol was expanded to include the subsequent City Center construction phase and any inadvertent discoveries of <i>iwi kūpuna</i> identified during the associated archaeological monitoring program.</p> <p>This consultation protocol is intended to support the project's PA and Section 106 compliance. This document was also prepared to support the proposed project's historic preservation review compliance under Hawai'i Revised Statutes (HRS) Chapter 6E-8 and HAR Chapter 13-275. The consultation undertaken under this protocol will facilitate the project's compliance with Hawaii State burial law (HRS Chapter 6E-43 and HAR Chapter 13-300). No portions of this protocol can supersede or contradict Hawaii State burial law and regulations.</p>
HHCTCP City Center Schedule	<p>The City Center AIS will be completed between fall 2011 and fall 2012. Between 2012 and 2014, the City Center preliminary construction design (which is the basis for the AISP's) will be refined into first interim and then the final construction design. City Center construction will begin in 2014 and will continue until 2019.</p>
Protocol Development	<p>Following HHCTCP PA Stipulation III.B.4, this consultation protocol was developed in consultation with the OIBC, lineal and cultural descendents, Native Hawaiian Organizations (NHOs), and other interested parties and individuals that were identified during the consultation process. Between March and July 2011, CSH, the City, and the City's representatives organized and attended numerous meetings, corresponded by e-mail and post, and communicated via telephone with identified interested parties. Comments and concerns regarding the consultation protocol were carefully considered throughout the development of the consultation protocol.</p>
Protocol Summary	<p>The consultation protocol consists of:</p> <ol style="list-style-type: none"> 1. Introduction 2. A process for communication about any identified <i>iwi kūpuna</i> 3. Definition and clarification of terms 4. Identification and inclusion of lineal and cultural descendents 5. Workflow of actions prior to and upon identification of <i>iwi kūpuna</i>, 6. A proactive consideration of possible <i>iwi kūpuna</i> relocation areas

Table of Contents

Management Summary	i
Section 1 Introduction	1
1.1 Project Background	1
1.2 Stipulation III.B.4 of the PA outlines the preparation of the consultation protocol	10
1.3 Purpose and Desired Outcome.....	11
1.4 Scope	11
1.5 Review of Draft Protocol.....	11
1.6 Standard Procedures Upon Identification of Human Skeletal Remains During Transit Related Work	12
1.6.1 “Previously identified” Burial Sites.....	12
1.6.2 “Inadvertent discovery” Burial Sites	14
Section 2 Definitions and Definition Clarifications for This Consultation Protocol.....	19
2.1 Definitions from Hawaii State Burial Law (HAR §13-300-2)	19
2.2 Clarification of Definitions Used in This Document	22
2.2.1 Definition of a “Burial Site”	22
2.2.2 Ethnicity Determination.....	27
2.2.3 Geography of Cultural Descendancy	29
Section 3 Early Identification, Notification, and Inclusion of Lineal and Cultural Descendants and NHOs	32
3.1 Initial Outreach Prior to the Beginning of HHCTCP City Center Archaeological Inventory Survey Fieldwork.....	32
3.2 Consultation During Survey, Construction and Regarding any Treatment of <i>Iwi Kūpuna</i>	32
3.3 Descendant Access to a Burial Site	33
Section 4 Workflow of Actions Prior to and upon Identification of <i>Iwi Kūpuna</i> during AIS and Subsequent Construction	34
4.1 Workflow of Actions Prior to and upon Identification of <i>Iwi Kūpuna</i> during AIS	34
4.2 Workflow of Actions Prior to and Upon Identification of <i>Iwi Kūpuna</i> During Subsequent Construction.....	36
Section 5 Pro-Active Consideration of Possible <i>Iwi Kūpuna</i> Relocation Areas.....	42
5.1 Considerations in Selection of Possible Relocation Areas	42
5.2 Possible <i>Iwi Kūpuna</i> Relocation Areas Suggested for Preliminary Consideration.....	42
5.2.1 Transit Stations	42
5.2.2 Existing <i>Iwi Kūpuna</i> Relocation Facilities	43
5.2.3 City Parks.....	44
Section 6 References Cited	49
Appendix A HHCTCP City Center Consulting Contact List	A-1
Appendix B HHCTCP City Center Consultation Results for Consultation Protocol ...	B-1

Appendix C OHA Consultation Response Letter	C-1
Appendix D Consultation E-mail.....	D-1

List of Figures

Figure 1. U.S. Geological Survey 7.5-Minute Series Topographic Map, Honolulu (1998) Quadrangle, showing the location of the HHCTCP City Center study area.....	2
Figure 2. Aerial photograph (source: U.S. Geological Survey Orthoimagery 2005), showing the location of the HHCTCP City Center study area.....	3
Figure 3. Tax Map Key 1-2, showing the western portion of the HHCTCP City Center study area	4
Figure 4. Tax Map Key 1-5, showing the central portion of the HHCTCP City Center study area	5
Figure 5. Tax Map Key 1-7, showing the central portion of the HHCTCP City Center study area	6
Figure 6. Tax Map Key 2-1, showing the central portion of the HHCTCP City Center study area	7
Figure 7. Tax Map Key 2-3, showing the eastern portion of the HHCTCP City Center study area	8
Figure 8. Proposed geographic basis for recognition as a descendant to burials (Kamehameha Schools Hawaiian Studies Institute 1987 O‘ahu Ahupua‘a Map)	30
Figure 9. Close-up of proposed geographic basis for recognition as a descendant to burials, with overlay of the HHCTCP consultation protocol area (City Center).....	31
Figure 10. Burial preserve at the Kalihi-Pālana Bus Facility, view to southwest	45
Figure 11. Photograph of burial preserve memorial plaque, view to northwest.....	45
Figure 12. Chinatown Re-Interment Facility on the <i>mauka</i> side of Nimitz just east of River Street on the Nimitz side of Chinatown Municipal Parking, view to northwest.....	46
Figure 13. Close-up of the Chinatown Re-Interment Facility on the <i>mauka</i> side of Nimitz just east of River Street on the Nimitz side of Chinatown Municipal Parking, view to north .	46
Figure 14. Mother Waldron Park Re-Interment Facility at the <i>makai</i> /' <i>ewa</i> corner of Halekauwila and Cooke streets, view to southeast	47
Figure 15. Close-up of Mother Waldron Park Re-Interment Facility at the <i>makai</i> /' <i>ewa</i> corner of Halekauwila and Cooke streets, view to south	47
Figure 16. General view of Kolowalu Park (Queen Street Extension Re-Interment Facility in background), view to southwest	48
Figure 17. Queen Street Extension Re-Interment Facility, view to north	48

List of Tables

Table 1. Types of Possible <i>Iwi Kūpuna</i> Finds and Resultant Actions	26
Table 2. Summary of Stations for Consideration as Re-Burial Location	43

Section 1 Introduction

1.1 Project Background

The City and County of Honolulu (City) is moving forward with preparation for an archaeological inventory survey for the Honolulu High-Capacity Transit Corridor Project's (HHCTCP) City Center (Construction Phase 4). A draft archaeological inventory survey plan (AISP) for the project has recently been completed by Cultural Surveys Hawai'i (CSH) for the City and the Federal Transit Administration (FTA), and on behalf of PB Americas, Inc. (PB) and is under review by the State Historic Preservation Division (SHPD) (Hammatt et al. 2011). There is a distinct chance that *iwi kūpuna* (Native Hawaiian skeletal remains) will be encountered in the course of this archaeological inventory survey work and/or in the construction for this phase of the HHCTCP project. The purpose of this consultation protocol is to develop a plan for consultation regarding treatment of any *iwi kūpuna* identified during the AIS, as well as during subsequent project construction.

The entire HHCTCP project corridor extends approximately 23 miles (37 km) from Kapolei in the west to Ala Moana Center in the east. The City Center Phase 4 area extends from Kalihi Stream to Ala Moana Center, located within Kalihi, Kapālama, and Honolulu Ahupua'a, Honolulu District, Island of O'ahu, Tax Map Key (TMK): [1] 1-2, 1-5, 1-7, 2-1, 2-3 (Various Plats and Parcels). The focus of this consultation protocol is this easternmost 4.3 miles (6.9 km) of the overall project corridor. This consultation protocol study area includes all of HHCTCP Construction Phase 4 (City Center), and, in order to provide continuity, the easternmost portion of Construction Phase 3 (Airport). This eastern-most portion of the project is believed to have a significantly higher probability of encountering *iwi kūpuna* than the western portions of the route. The consultation protocol study area is depicted on a U.S. Geological Survey 7.5-Minute Series Topographic Map, Honolulu (1998) Quadrangle, an aerial photograph, and on various TMKs (Figure 1 to Figure 7).

The study area is primarily located within existing road rights-of-way owned by the State of Hawai'i or the City and County of Honolulu, including Dillingham Boulevard, Ka'aahi Street, Nimitz Highway, Halekauwila Street, Queen Street, and Kona Street. Many of the support facilities along the project corridor are located on adjacent privately owned lands.

The purpose of the project is to provide high-capacity rapid transit in the highly congested east-west transportation corridor between Kapolei and Ala Moana Center via a fixed guideway rail transit system. FTA and the City will fund project construction. The Honolulu Authority for Rapid Transportation (HART), which began operations July 1, 2011, will oversee the planning, construction, operation and extension of the rail system. In addition to the guideway, the project will require construction of transit stations and ancillary support facilities. Nine proposed transit stations are within the current study area: Middle Street Transit Center Station; Kalihi Station; Kapālama Station; Iwilei Station; Chinatown Station; Downtown Station; Civic Center Station; Kaka'ako Station; and Ala Moana Center Station (Figure 1). Project construction will also require relocation of existing utility lines within the project corridor that conflict with the project

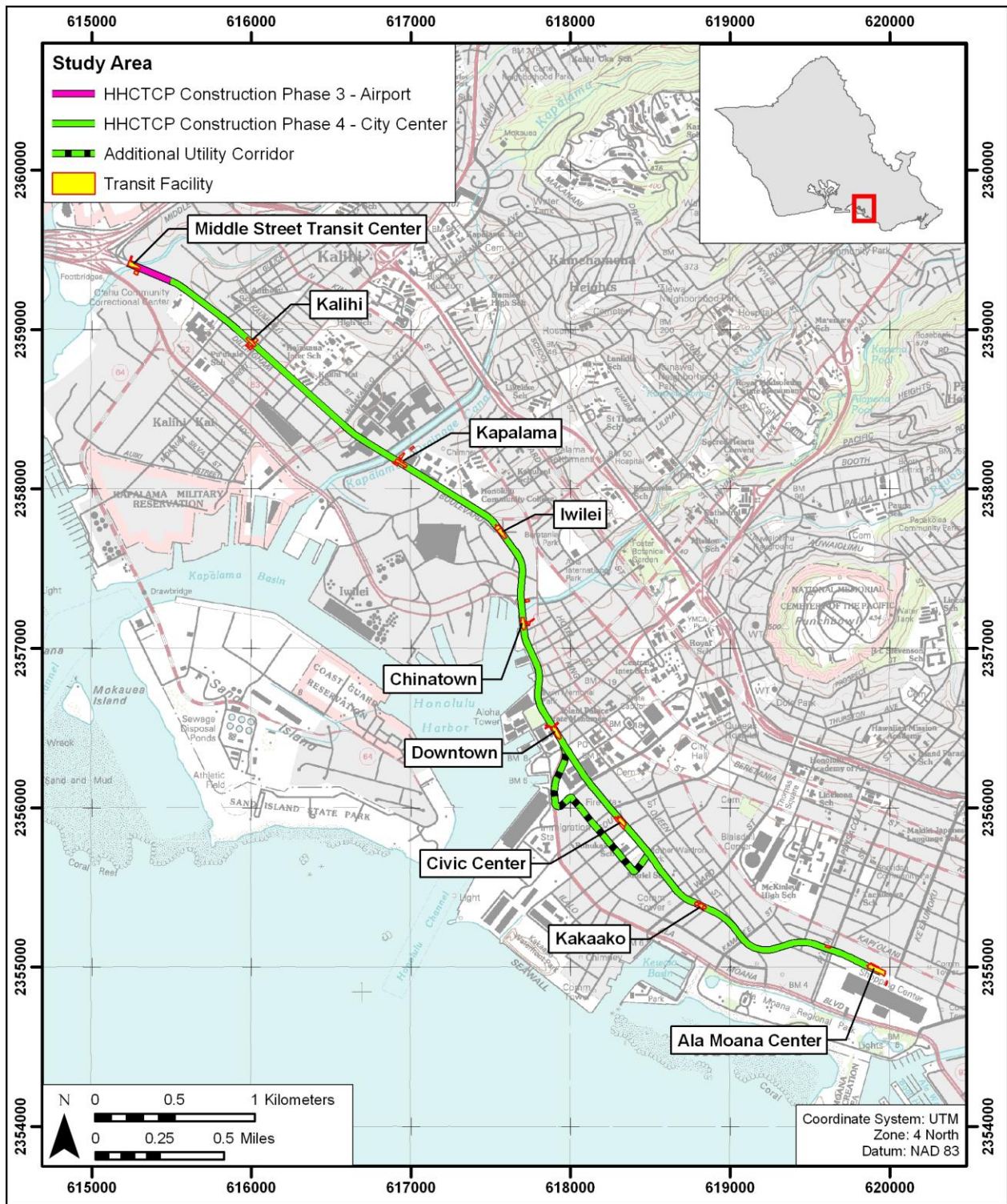


Figure 1. U.S. Geological Survey 7.5-Minute Series Topographic Map, Honolulu (1998) Quadrangle, showing the location of the HHCTCP City Center study area

Consultation Protocol for *Iwi Kūpuna* Discovery During the Archaeological Inventory Survey for the City Center (Construction Phase 4) of the Honolulu High-Capacity Transit Corridor Project Kalihi, Kapālama, and Honolulu Ahupua'a Honolulu District, Island of O'ahu

TMK: [1] 1-2, 1-5, 1-7, 2-1, 2-3 (Various Plats and Parcels)

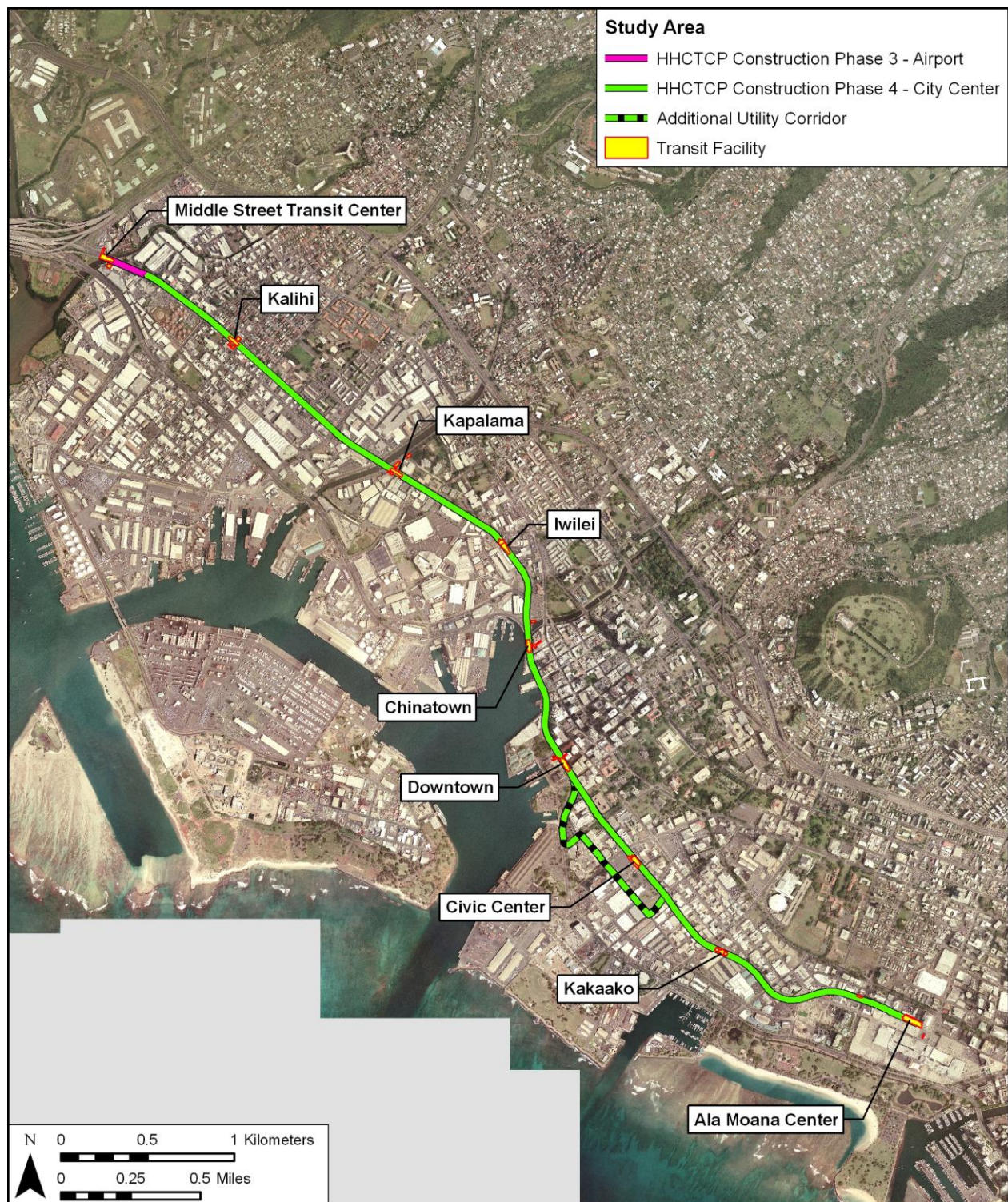


Figure 2. Aerial photograph (source: U.S. Geological Survey Orthoimagery 2005), showing the location of the HHCTCP City Center study area

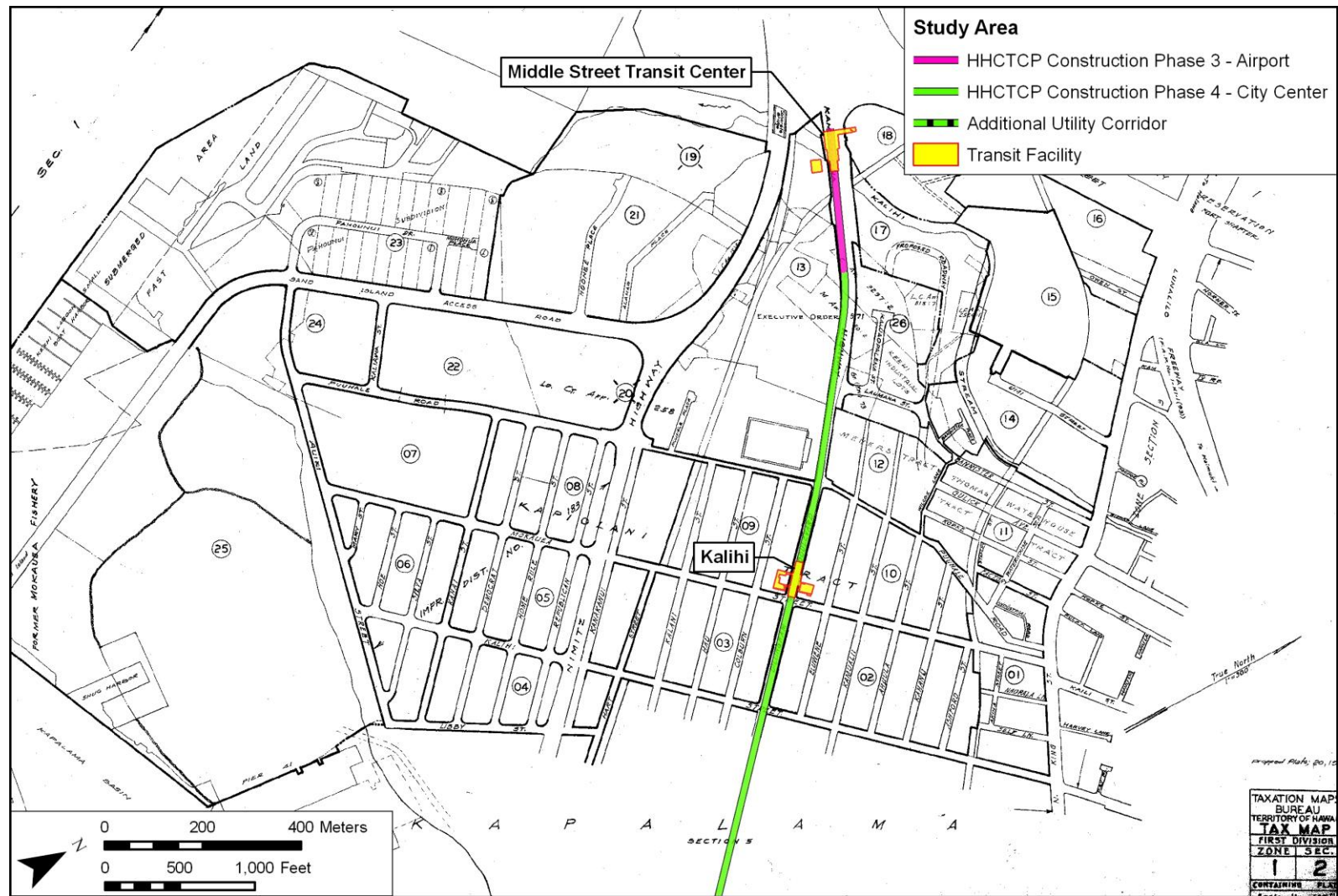


Figure 3. Tax Map Key 1-2, showing the western portion of the HHCTCP City Center study area

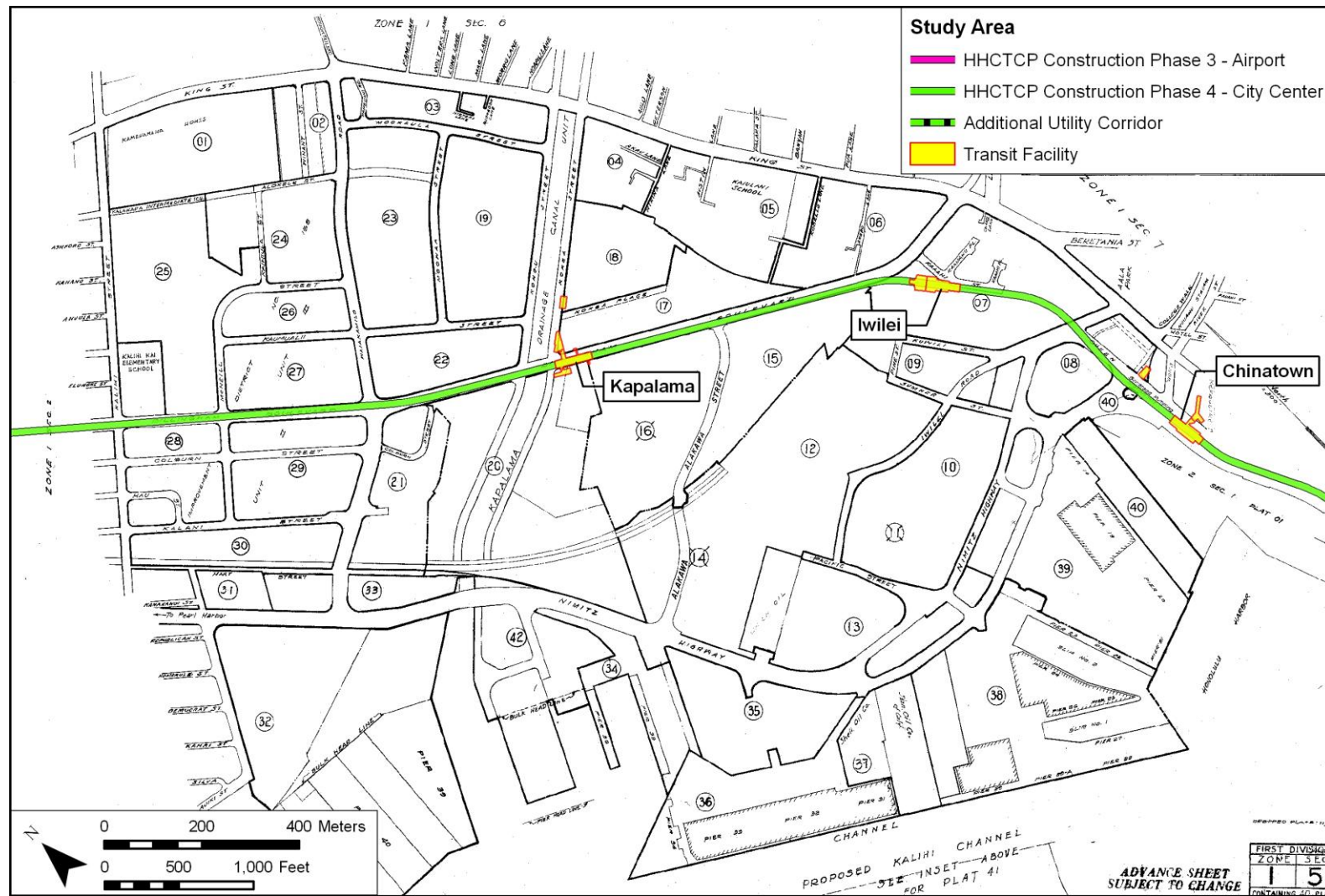


Figure 4. Tax Map Key 1-5, showing the central portion of the HHCTCP City Center study area

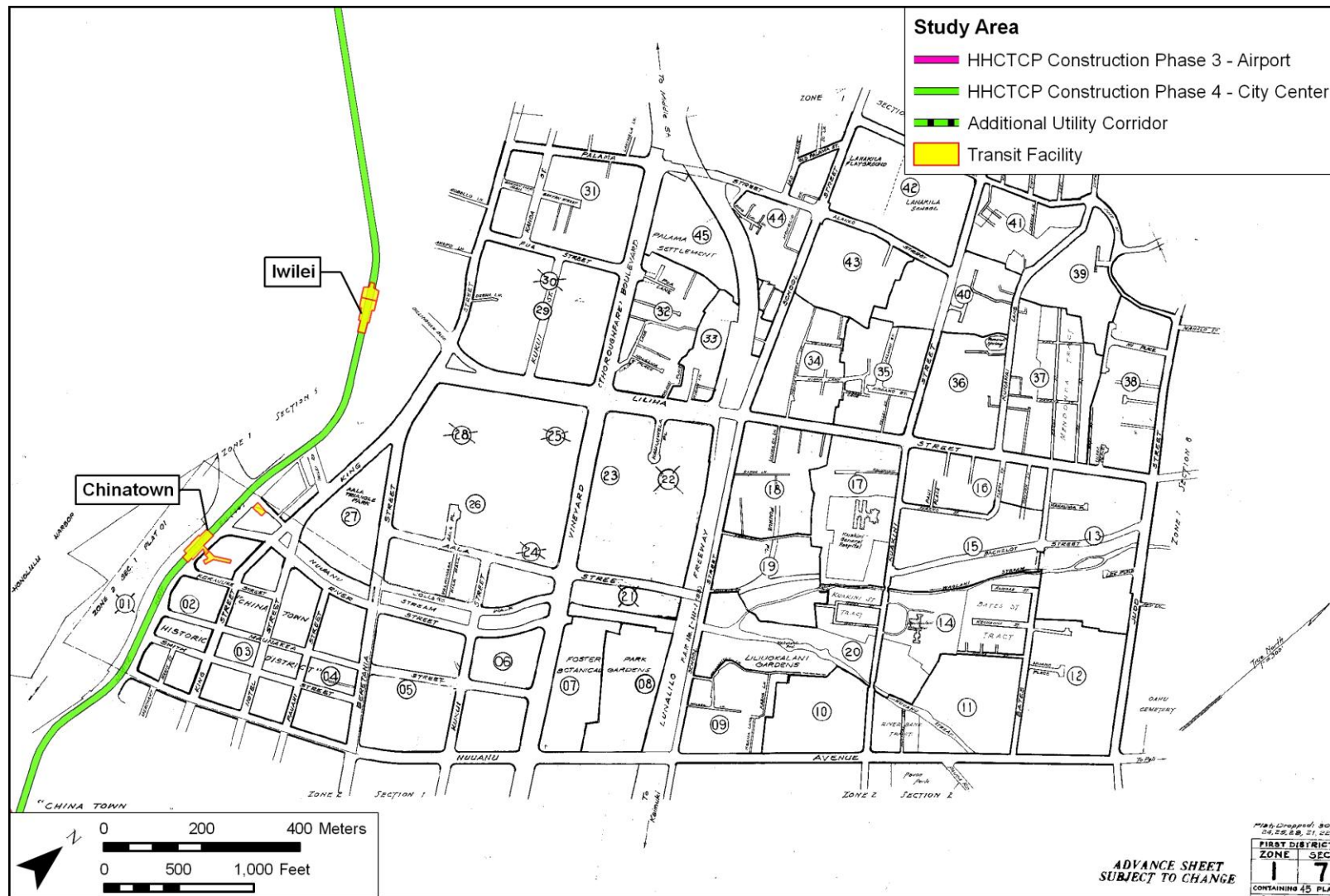


Figure 5. Tax Map Key 1-7, showing the central portion of the HHCTCP City Center study area

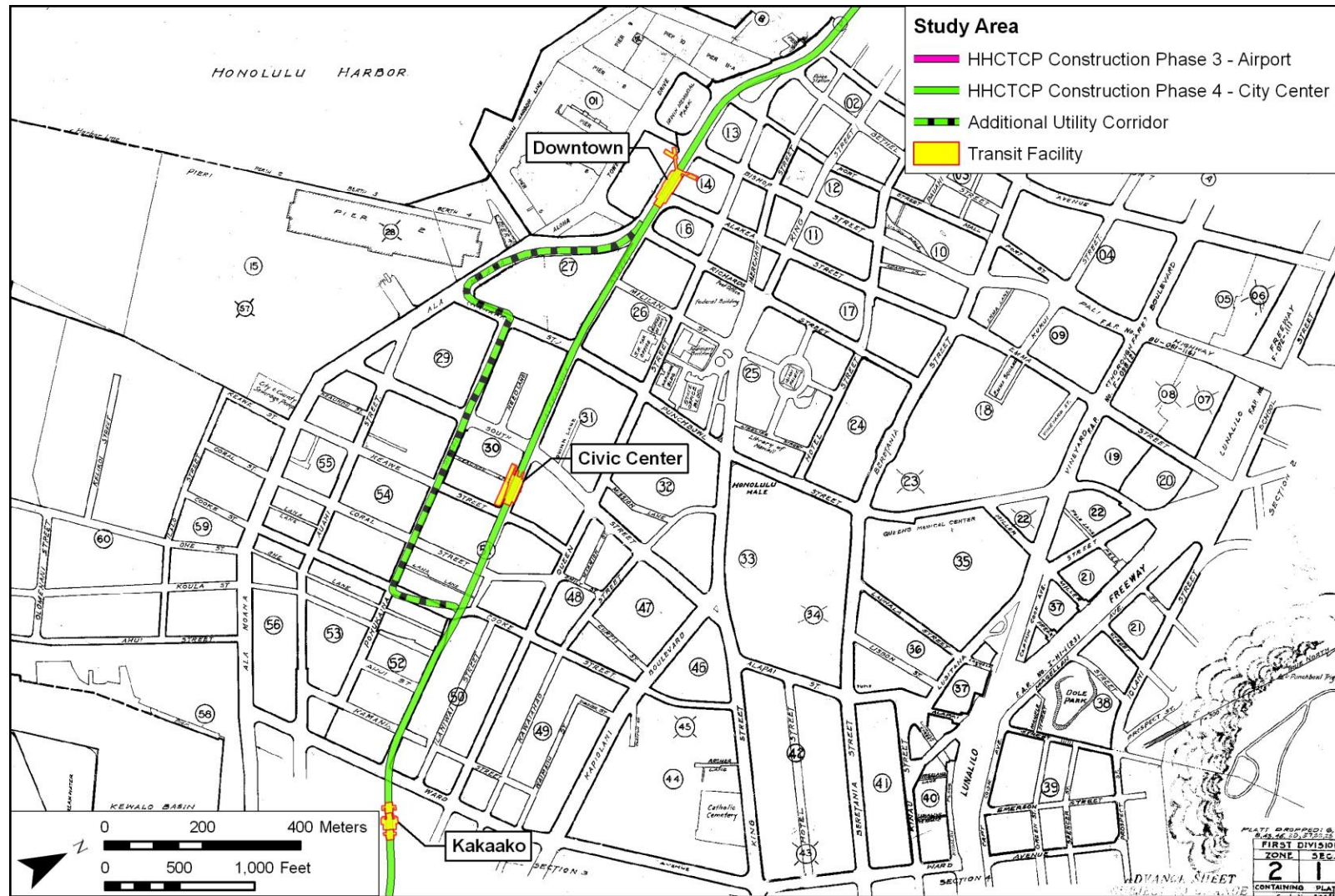


Figure 6. Tax Map Key 2-1, showing the central portion of the HHCTCP City Center study area

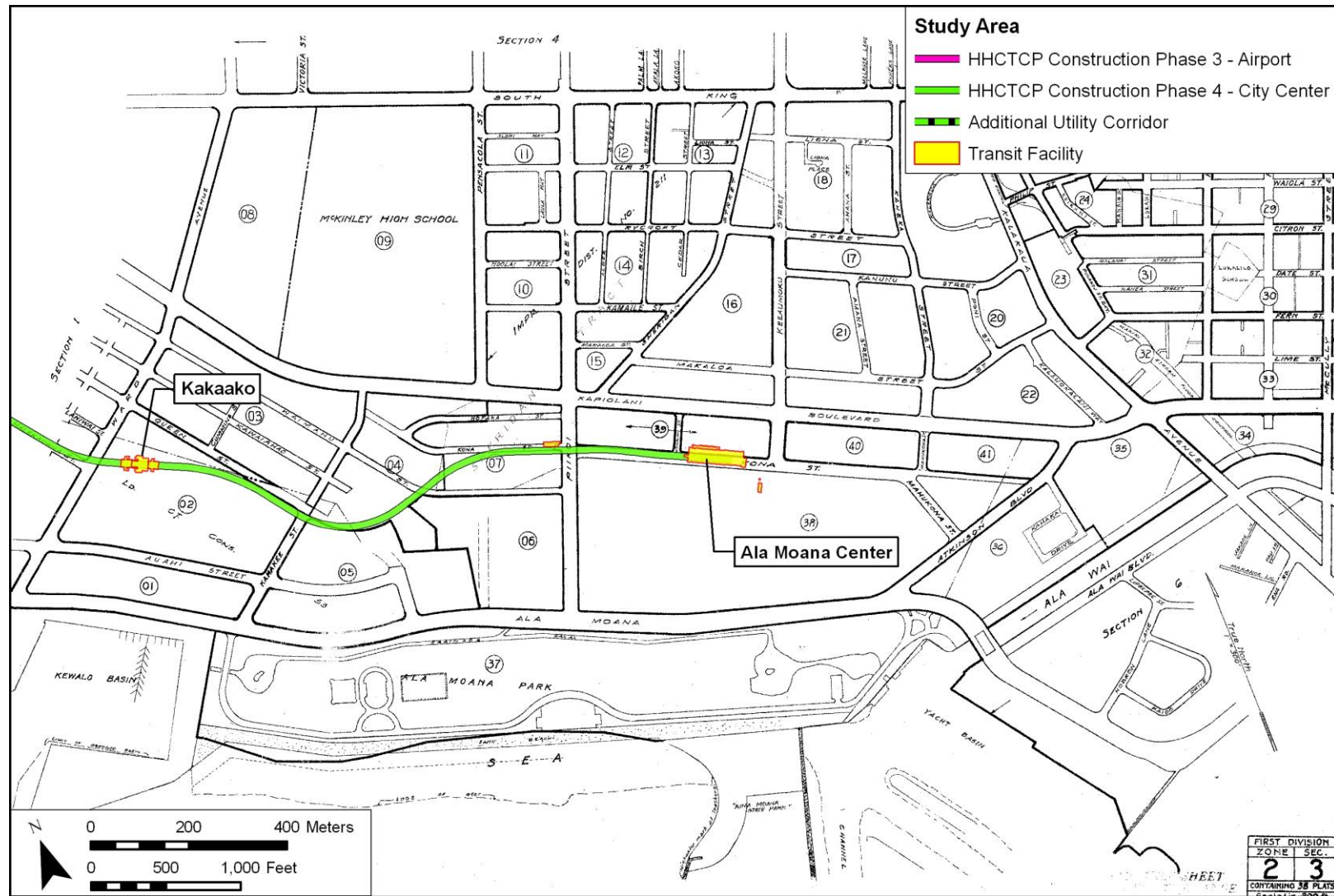


Figure 7. Tax Map Key 2-3, showing the eastern portion of the HHCTCP City Center study area

design. Minimally, land-disturbing activities will include grading of facility locations and excavations for guideway column foundations, subsurface utility relocation and installation, and construction of foundations for stations and ancillary facilities.

Project funding is provided by FTA and the City. Agencies involved include the City, FTA, SHPD, and the Advisory Council on Historic Preservation. The AIS will be completed between fall 2011 and fall 2012. Between 2012 and 2014, the preliminary construction design will be refined into first interim and then the final construction design. City Center construction will begin in 2014 and will continue until 2019.

Due to federal (FTA) funding, this project is a federal undertaking, requiring compliance with Section 106 of the National Historic Preservation Act, the National Environmental Policy Act, Section 4(f) of the Department of Transportation Act, and Federal Regulation 36 CFR part 79 regarding curation facility standards. Through the Section 106 historic preservation review process, the project's lead federal agency, FTA, has determined that the project will have an adverse effect on historic properties currently listed, or eligible for listing, on the National Register of Historic Places. The Hawaii State Historic Preservation Officer (SHPO) concurred with this undertaking effect determination. To address the undertaking's adverse effect, a Programmatic Agreement (PA) was executed January 18th, 2011, with FTA, Hawaii SHPO, the United States Navy, and the Advisory Council on Historic Preservation as signatories. The project is also subject to historic preservation review under Hawaii Revised Statutes (HRS) Chapter 6E-8 and HAR Chapter 13-275. Burial treatment and related consultation follow HRS Chapter 6E-43 and HAR Chapter 13-300.

Following HHCTCP PA Stipulation III.B.1, the City has prepared an archaeological inventory survey plan (AISP) based on the available preliminary construction design (Hammatt et al. 2011). This AISP will be implemented and the investigation results will inform subsequent interim and final City design so that the project's adverse effect on archaeological cultural resources, including *iwi kūpuna*, can be avoided or reduced.

This consultation protocol was prepared to fulfill HHCTCP PA Stipulation III.B.4, which requires that the City, in coordination with the O'ahu Island Burial Council (OIBC) and other concerned parties complete a protocol for consultation regarding treatment of any *iwi kūpuna* [Native Hawaiian human remains] identified during the HHCTCP City Center AIS and subsequent construction. The focus of the consultation protocol is to provide methods for the early dissemination of information related to discoveries of *iwi kūpuna* so that timely discussions can take place to investigate options to preserve Native Hawaiian burials in place—rather than relocate them—to the extent possible given the limitations of project engineering. This consultation protocol is intended to support the project's PA and Section 106 compliance. This document was also prepared to support the proposed project's historic preservation review compliance under Hawai'i Revised Statutes (HRS) Chapter 6E-8 and HAR Chapter 13-275. The early consultation undertaken under this protocol will facilitate the project's compliance with Hawaii State burial law (HRS Chapter 6E-43 and HAR Chapter 13-300). No portions of this protocol can supersede or contradict Hawaii State burial law.

This consultation protocol was prepared specifically to address the HHCTCP City Center section given the higher likelihood of encountering *iwi kūpuna* as evidenced by previous

archaeological studies, and the area's distinct history. A separate consultation protocol will be prepared to address the treatment of any *iwi kūpuna* identified during the HHCTCP Airport AIS (Phase 3) and to address construction work for HHCTCP Phases 1, 2, and 3. Background research and previous archaeological studies for the Airport (Phase 3) AISP and AIS investigations for HHCTCP Phases 1 and 2 represent a different historic and geographic context from the City Center project area.

The project's area of potential effect (APE) for archaeological cultural resources is defined in the HHCTCP's Final Programmatic Agreement (Stipulation II.A.1.) as all areas of direct ground disturbance. For the City Center area, project engineers estimate that the project's area of direct ground disturbance is approximately 604,289 square feet (or 13.87 acres). These 13.87 acres are the survey area for City Center AISP investigation. The fieldwork for the City Center archaeological inventory survey (AIS) will be carried out under CSH's archaeological permit number 11-17, issued by the SHPD, per HAR Chapter 13-282.

1.2 Stipulation III.B.4 of the PA outlines the preparation of the consultation protocol

Stipulation III.B.4. of the Final Programmatic Agreement outlines the preparation of the consultation protocol:

The City, in coordination with the OIBC, lineal and cultural descendents, NHOs, and other interested parties that are identified in discussion with OIBC shall complete a draft protocol for consultation regarding treatment of any *iwi kupuna* identified during the AIS. It shall be provided to the OIBC for review within six (6) months of the execution of this PA. The protocol shall address, at minimum, a process for communication about any identified *iwi kupuna*, definitions that will be applied to the Project, identification and inclusion of lineal and cultural descendents and NHOs, and workflow of actions prior to and upon identification of *iwi kupuna* during AIS. The workflow shall provide for options to avoid moving *iwi kupuna* (preservation in place) versus relocation options. Avoidance shall include relocation of columns, change of column design to or from a center alignment to straddle bent or other alternatively-supported design, modification of span length, and alternate utility locations. The City will take into account any comments provided within sixty (60) days from the OIBC, lineal and cultural descendents, NHOs and other interested parties to finalize the draft protocol. The City will proceed in accordance with the protocol once it is approved by FTA. Nothing in this protocol will supersede HRS § 6E 43.5, or HAR Chapter 13-300 [HHCTCP Programmatic Agreement 2011:11].

In accordance with the Final Programmatic Agreement, this consultation protocol was developed in consultation with the OIBC, lineal and cultural descendents, Native Hawaiian Organizations (NHOs), and other interested parties and individuals that were identified during the consultation process. Between March and July 2011, CSH, the City, and the City's representatives organized and attended numerous meetings, corresponded by e-mail and post, and communicated via telephone with identified interested parties. Comments and concerns

regarding the consultation protocol were carefully considered throughout the development of the consultation protocol.

This consultation protocol addresses definitions of terms, the identification and inclusion of lineal and cultural descendents, a workflow of actions prior to and upon the identification of *iwi kūpuna*, a process of consultation communication, and consultation with project engineers in order to avoid moving *iwi kūpuna* if possible. In addition, the protocol includes a proactive discussion of possible relocation areas for *iwi kūpuna* should it be deemed necessary.

The PA specifically states that the consultation protocol shall address the treatment of any *iwi kūpuna* identified during the AIS. During the process of consultation for the development of this consultation protocol, however, particular concerns were raised regarding the treatment of *iwi kūpuna* during the subsequent construction phase of City Center work. In response to these concerns, this consultation protocol has been expanded from the original PA directive concerning a consultation protocol specific to the AIS to include the City Center construction phase and any inadvertent discoveries of *iwi kūpuna* identified during the associated archaeological monitoring program.

Note: this protocol is not intended to, and cannot legally, modify Hawaii State Burial Law. The protocol's purpose is to augment the consultation and promote informed decision making regarding burial treatment. Normally this consultation and the associated burial treatment decisions take place after the AIS is complete under the burial treatment plan preparation process. While the protocol cannot replace the burial treatment plan preparation process, it can facilitate this process. The protocol will increase the project's transparency with the Native Hawaiian community.

1.3 Purpose and Desired Outcome

The purpose of the protocol is to set forth the City's intentions with respect to the process whereby they will carry out consultation as required by the Programmatic Agreement Stipulation III. B. 4. As a protocol, it is not intended to be a binding contract and it does not create, recognize or deny rights and obligations, including funding obligations, on the part of the City. By starting the consultation and the associated burial treatment decision making process earlier in the process, we will achieve better results and facilitate the burial treatment plan preparation process after the AIS is complete. While the protocol cannot replace the burial treatment plan preparation process, it can inform the decision making and facilitate this process.

1.4 Scope

This protocol will apply to all consultations undertaken by the parties throughout the inventory survey process, and any other consultations upon which the parties agree the protocol will apply.

1.5 Review of Draft Protocol

Process for consultation on the draft consultation protocol to include:

- In-house review of draft consultation protocol by the City's Corporation Council,

- Review by the SHPD (to be concurrent with review by the following),
- Presentation of draft consultation protocol to the OIBC Transit Task Force
- Presentation of draft consultation protocol to the OIBC at monthly meeting
- Presentation of draft consultation protocol to the OHA and OHA's Native Hawaiian Historic Preservation Council
- Disseminate a link to an electronic version of the draft protocol for NHO and individual review and comment, this will be accomplished by an email notification using the Appendix A consultation list.

Following the sixty day review period for the draft protocol, the City will take into account the review comments received in the preparation of the final consultation protocol. The City will implement the final protocol following its approval by FTA.

1.6 Standard Procedures Upon Identification of Human Skeletal Remains During Transit Related Work

Hawaii State Law places a good deal of import on whether a Burial Site is identified during archaeological inventory survey (or data recovery of a possible burial site) – in which case the burial site is “Previously identified” - or is encountered during the course of construction work - in which case the burial site is an “Inadvertent discovery” (see following “Definitions”)

1.6.1 “Previously identified” Burial Sites

"Previously identified" means burial sites containing human skeletal remains and any burial goods identified during archaeological inventory survey and data recovery of possible burial sites, or known through oral or written testimony (HAR Chapter 13-300-2).

HAR §13-300-31(b) specifies:

- (b) Burial sites discovered during archaeological inventory survey that appear to be over fifty years old shall be classified as previously identified for which the council or department, whichever is applicable, shall determine appropriate treatment.
- (1) Information relating to the location or description of burial sites identified during the archaeological inventory survey shall be placed in a section of the archaeological inventory report such that the section may be readily removed should the council or review board deem the information to be sensitive.
- (2) Possible burial sites identified during archaeological inventory survey shall be classified as previously identified where human skeletal remains are confirmed during the archaeological data recovery phase.
- (3) Where human skeletal remains discovered during archaeological inventory survey are not situated in a burial site context, the department shall be immediately notified.
- (c) In order to develop a statewide inventory of burial sites, the department shall:

- (1) Consult knowledgeable persons regarding the location and identity of human skeletal remains in a burial or reburial site;
- (2) Acquire authorization from the landowner for access to the property where a burial or reburial site is located;
- (3) Inspect and document the location and description of a burial or reburial site;
- (4) Place appropriate information on the statewide burial site inventory; and
- (5) Provide written notification to the landowner of burial site documentation.
- (d) The department shall extrapolate relevant information from its records relating to burial and reburial sites including location by island, district, *ahupua'a*, tax map key number, street address where available, and name of present landowner, and place all such information on the burial site inventory.
- (e) Where known lineal descendants disagree with the recording of any information from a related burial or reburial site, no information shall be placed on the burial site inventory provided the department maintains a record of the tax map key of the property in which the burial or reburial site is located for purposes of protection from harm.
- (f) The department shall immediately notify any known lineal descendants when a permit is being reviewed by the department for the parcel in which a related burial or reburial site is located, or where an activity is known which may cause harm to a related burial or reburial site.
- (g) An evaluation of ethnicity shall be made by the department for all human skeletal remains situated or formerly situated at a burial site. The following evidence shall be gathered and considered accordingly:
 - (1) Oral or written evidence relating to the human skeletal remains or burial site evaluated by department cultural specialists, including but not limited to:
 - (A) Histories and traditions associated with specific places and families;
 - and
 - (B) Genealogies.

Where oral or written evidence establishes ethnicity by a reasonable belief, the evaluation ends. Where the evidence does not establish ethnicity by reasonable belief, paragraph (2) shall apply;

- (2) Archaeological evidence relating to the human skeletal remains or burial site gathered by a professional archaeologist or archaeological firm meeting department minimal qualifications and standards. Evidence shall be evaluated by department archaeologist including but not limited to:
 - (A) Burial features including burial goods or other indicators of burial treatment;
 - (B) Where a cultural layer is associated with a burial site, the nature of its contents including artifacts and food remains; or

- (C) The age of radiocarbon dates associated with the cultural layer in which human skeletal remains are situated.

Where the archaeological evidence establishes ethnicity by a reasonable belief, the evaluation ends. Where the archaeological evidence alone does not establish ethnicity, but when considered together with any oral or written testimony, ethnicity is established by reasonable belief, the evaluation ends. Where the evidence does not establish ethnicity by reasonable belief, paragraph (3) shall apply;

- (3) Osteological evidence, to be gathered by a physical anthropologist meeting department minimal qualifications, in accordance with section 13-300-32. Where osteological evidence fails to suggest ethnicity by reasonable belief, appropriate treatment of the human skeletal remains shall be determined by the department.
- (h) Where a previously identified burial site is proposed to be preserved in place, no osteological or disturbing archaeological investigation shall occur, unless authorized by the department.
- (1) Where oral or written testimony does not establish ethnicity by reasonable belief, archaeological surface evidence and any pre-existing archaeological evidence from the burial site or pre-existing osteological evidence from burial sites in the surrounding area shall be reviewed by the department.
- (2) Where human skeletal remains are reasonably believed to be Native Hawaiian, the burial site shall be so classified and the council shall determine appropriate treatment.
- (3) Where human skeletal remains are reasonably believed to be non Native Hawaiian, the burial site shall be so classified and the department shall determine appropriate treatment.
- (4) Where existing evidence fails to clarify ethnicity by a reasonable belief, appropriate treatment of the human skeletal remains shall be determined by the department.

[Eff SEP 28 1996] (Auth: HRS §§6E-43.5, 91-2) (Imp: HRS §§6E-43, 6E-43.5, 43.6)

1.6.2 “Inadvertent discovery” Burial Sites

"Inadvertent discovery" means the unanticipated finding of human skeletal remains and any burial goods resulting from unintentional disturbance, erosion, or other ground disturbing activity (HAR Chapter 13-300-2).

HAR §13-300-40 specifies:

- (a) The department shall have jurisdiction over any inadvertent discovery of human skeletal remains and any burial goods over fifty years old, regardless of ethnicity.
- (b) The inadvertent discovery shall be immediately reported to the following persons:
 - (1) The state historic preservation division, unless discovery occurs on Saturday, Sunday, or holiday at which time the report shall be made to the division of conservation and resource enforcement;

- (2) The medical examiner or coroner from the county in which the inadvertent discovery occurred; and
- (3) The police department of the county in which the inadvertent discovery occurred.
- (c) Once the report of an inadvertent discovery has been made, the department shall do the following:
 - (1) Assure that all activity in the immediate area of the human skeletal remains ceases and that appropriate action to protect the integrity and character of the burial site from damage is undertaken;
 - (2) Assure that a representative of the medical examiner or coroner's office and a qualified archaeologist determines whether the human skeletal remains are over fifty years old;
 - (3) Conduct a site inspection where necessary;
 - (4) Gather sufficient information, including oral tradition, by seeking individuals who may have knowledge about the families possibly connected lineally or culturally with the inadvertently discovered human skeletal remains, to help document the nature of the burial context and determine appropriate treatment;
 - (5) Complete departmental inadvertent discovery forms;
 - (6) Notify the council member who represents the geographic region where the human skeletal remains were discovered, and the Office of Hawaiian Affairs;
 - (7) Inform the landowner or its agent of the discovery if different from the person making the report; and
 - (8) Determine whether to preserve in place or relocate the human skeletal remains.
- (d) In the event an inadvertent discovery of multiple human skeletons occurs on O`ahu, the department shall have two working days to complete the above, and three working days on all other islands. In the event the inadvertent discovery consisting of a single human skeleton occurs on O`ahu, the department shall have one working day to complete the above, and on all other islands the department shall have two working days. The statutory time periods may be extended upon voluntary written consent of the landowner or its authorized representative.
- (e) Where human skeletal remains are reasonably believed to be Native Hawaiian following an evaluation pursuant to section 13-300-31, the department shall determine whether to preserve in place or relocate, following consideration and application of the criteria stated in section 13-300-36 and in consultation with appropriate council members, the landowner, and any known lineal or cultural descendants.
- (f) Where the human skeletal remains are reasonably believed to be non Native Hawaiian following an evaluation pursuant to section 13-300-31, the department shall determine whether to preserve in place or relocate following application of the criteria stated in section 13-300-37, and in consultation with appropriate ethnic organizations, the landowner, and any known lineal or cultural descendants.

- (g) In the event ethnicity of the human skeletal remains is not established by reasonable belief and in the absence of a time extension, the department shall determine whether to preserve in place or relocate following application of any relevant criteria stated in sections 13-300-36 and 13-300-37, and in consultation with the landowner.
- (h) Within ninety days following a determination to preserve in place or relocate, the department shall approve the burial site component of either a preservation plan or an archaeological data recovery plan.
- (i) Where the department determines to preserve the human skeletal remains in place, the burial site component of the preservation plan shall be prepared by the department or with the department's concurrence.
- (1) In preparing the burial site component of the preservation plan, the department shall consult with the following:
 - (A) Council members representing the geographic region in which the inadvertent discovery occurred, where human skeletal remains are reasonably believed to be Native Hawaiian following an evaluation of ethnicity pursuant to section 13-300-31;
 - (B) The affected landowner or the landowner's representative;
 - (C) Any appropriate ethnic organizations where human skeletal remains are reasonably believed to be non Native Hawaiian following an evaluation of ethnicity pursuant to section 13-300-31; and
 - (D) Any known lineal or cultural descendants.
- (2) At a minimum, the burial site component of the preservation plan shall include statements describing:
 - (A) The location of all inadvertently discovered human skeletal remains and any burial goods determined to be preserved in place;
 - (B) Short term measures to immediately protect all burial sites including, but not limited to, fencing, buffers, and site restoration;
and
 - (C) Long term measures to properly manage and protect all burial sites including, but not limited, to buffers, landscaping, and access by known lineal or cultural descendants.
- (3) In order to provide perpetual protection for human skeletal remains inadvertently discovered, departmental determinations to preserve in place shall be recorded in the bureau of conveyances. In addition, any affected landowner may enter into an in situ burial agreement with the State.
- (j) Where the department determines to relocate the human skeletal remains, the burial site component of the archaeological data recovery plan shall be prepared by the department or with the department's concurrence.

- (1) In preparing the burial site component of the archaeological data recovery plan, the department shall consult with the same parties as stated in subsection (i)(1).
- (2) At a minimum, the burial site component of the archaeological data recovery plan shall include statements describing:
 - (A) All inadvertently discovered human skeletal remains and any burial goods determined to be relocated;
 - (B) The archaeological methods utilized to conduct disinterment;
 - (C) The location and manner by which human skeletal remains and burial goods will be curated where reburial will not occur immediately following disinterment;
 - (D) The reburial site location mutually agreed upon by the landowner and any recognized lineal descendant;
 - (E) The manner in which the reburial site will be prepared;
 - (F) Short term measures to immediately protect the reburial site including, but not limited to, fencing and buffers; and
 - (G) Long term measures to properly manage and protect the reburial site including, but not limited to, buffers, landscaping, and access by known lineal or cultural descendants.
- (3) In order to provide perpetual protection for the newly established reburial site, all departmental determinations to relocate human skeletal remains and any burial goods shall be recorded in the bureau of conveyances. In addition, any affected landowner may enter into a reburial agreement with the State.
- (k) Intentional removal of inadvertently discovered human skeletal remains or burial goods is prohibited until a determination to relocate is made by the department pursuant to section 6E-43.6, HRS, and this chapter, except that the department shall be authorized to allow temporary removal of the remains or burial goods to protect from imminent harm, until a determination is made.
- (l) The implementation of the preservation plan or archaeological data recovery plan shall be the responsibility of the following persons:
 - (1) The landowner, permittee, or developer, in discoveries related to development where land alteration project activities exist; and
 - (2) The department, in non-land alteration project contexts.
- (m) Reburial shall be based on commonly accepted cultural practices as routinely recorded by the department. Additional requests by lineal or cultural descendants beyond commonly accepted cultural practices, deemed specific or special by the department following consultation with the appropriate council or ethnic organization, may be accommodated provided that any additional expenses incurred are paid by the descendants.
- (n) In the event the landowner or it's authorized representative knowingly fails to comply with any of the provisions of the preservation plan or archaeological data recovery plan, and

directly or indirectly causes the taking, appropriation, excavation, injury, destruction, or alteration of any burial or reburial site, the action may be considered a violation of applicable provisions of chapter 6E, HRS, and this chapter and subject to statutory and administrative penalties.

- (o) The inadvertent discovery of Native Hawaiian skeletal remains and any burial goods on lands managed by the department of Hawaiian home lands shall be governed by applicable provisions of the Native American Graves Protection and Repatriation Act (25 U.S.C. §3001). [Eff SEP 28 1996] (Auth: HRS §§6E-43, 6E-43.5, 91-2) (Imp: HRS §6E-43.6, 25 U.S.C. §3001)

Section 2 Definitions and Definition Clarifications for This Consultation Protocol

Hawai'i State burial law (HRS Chapter 6E-43 and HAR Chapter 13-300) and regulations specifies the procedures for the discovery and treatment of burials found outside active and maintained cemeteries. The definitions associated with burial finds are provided below. In consultation with the OIBC, NHOs, lineal and cultural descendents, and other interested parties, however, it has become evident that certain terms remain unclear and are variously interpreted, in particular the terms: "burial site" and "cultural descendant", as well as the determination of ethnicity. This consultation protocol provides clarification of these terms and concepts and outlines the interpretation that will be followed by the consultation protocol.

2.1 Definitions from Hawaii State Burial Law (HAR §13-300-2)

The following definitions are supplied from Hawaii Administrative Rules §13-300-2 Definitions. These definitions are to be used unless the State Historic Preservation Division agrees the context requires otherwise:

"*Ahupua'a*" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Appeals panel" means the panel comprised of three members from the board of land and natural resources and three council chairpersons that administratively adjudicates an appeal of a council determination as a contested case.

"Applicant" means a person representing a sufficient ownership interest in real property or a lineal descendant who requests the council or the department, whichever is applicable, to determine appropriate treatment of a burial site or human skeletal remains and any burial goods or both, located at, or originating from, the real property.

"Appropriate ethnic organization" means a group comprised of a majority of individuals of the same ethnicity recognized by the department as representing that particular ethnic group.

"Appropriate Hawaiian organization" means a group recognized by the council that is comprised of a majority of Hawaiians and has a general understanding of Hawaiian culture, in particular, beliefs, customs, and practices relating to the care of ancestral Native Hawaiian skeletal remains, burial goods, and burial sites.

"Archaeological data recovery plan" means the form of mitigation that archaeologically records or recovers or both, a reasonable and adequate amount of information as determined by the department, from a significant historic property. With respect to a burial site, this plan includes the disinterment of human skeletal remains and any burial goods and may involve the recording of a reasonable amount of information from the burial site if specifically authorized by the council or department, whichever is applicable, following a determination to relocate the contents of the burial site.

"Archaeological inventory survey" means the process of identifying and documenting historic properties and burial sites in a delineated area, gathering sufficient information to evaluate

significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Areas with a concentration of skeletal remains" means any location where multiple human skeletons are present.

"Burial good" means any item reasonably believed to have been intentionally placed with the human skeletal remains of an individual or individuals at the time of burial.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface and subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Burial treatment plan" means a plan that meets all necessary requirements as set forth in this chapter and which proposes treatment of burial sites, including preservation in place or relocation, submitted to the department or council, whichever is appropriate, for a determination.

"Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing.

"Council" means the island burial councils.

"Cultural descendant" means with respect to non Native Hawaiian skeletal remains, a claimant recognized by the department as being the same ethnicity, or with respect to Native Hawaiian skeletal remains, a claimant recognized by the council after establishing genealogical connections to Native Hawaiian ancestors who once resided or are buried or both, in the same *ahupua'a* or district in which certain Native Hawaiian skeletal remains are located or originated from.

"Department" means department of land and natural resources.

"Government record" means information maintained by the department in written, auditory, visual, electronic, or other physical form.

"Historic property" means any building, structure, object, district, area, or site, including *heiau* and underwater site, which is over fifty years old.

"HRS" means Hawai'i Revised Statutes, as amended.

"Hui Malama I Na Kupuna 'O Hawai'i Nei" means the Native Hawaiian organization whose purpose is to provide cultural and spiritual care to ancestral Native Hawaiian skeletal remains and burial goods through repatriation and reburial, and by protecting known burial sites.

"Human skeletal remains" means the body or any part of a deceased human being.

"Inadvertent discovery" means the unanticipated finding of human skeletal remains and any burial goods resulting from unintentional disturbance, erosion, or other ground disturbing activity.

"In situ burial agreement" means an agreement, recorded with the bureau of conveyances, between the State and the landowner which establishes the protection of the burial site in place as a preservation easement in perpetuity.

"Lineal descendant" means with respect to Native Hawaiian skeletal remains, a claimant who has established to the satisfaction of the council, direct or collateral genealogical connections to certain Native Hawaiian skeletal remains, or with respect to non Native Hawaiian skeletal remains, a claimant who has established to the satisfaction of the department, direct or collateral genealogical connections to certain non Native Hawaiian skeletal remains.

"Metric trait" means a skeletal or dental trait quantified by measurement.

"Mitigation plan" means the plan setting forth appropriate treatment of historic properties, burial sites, or human skeletal remains.

"Multiple skeletons" means human skeletal remains representing more than one individual.

"Non metric trait" means a skeletal or dental trait which is present or absent and genetic in origin, but does not include changes due to disease or injury.

"Office of Hawaiian Affairs" means the principal public agency established by the Hawai'i State constitution and chapter 10, HRS, to develop and coordinate services and programs for the betterment of the conditions of Native Hawaiians and Hawaiians.

"Over fifty years old" means with respect to human skeletal remains, being deceased for more than fifty years and not the age of the individual at death.

"Party" means a person properly seeking and entitled as of right to be admitted as a party in any court or agency proceeding.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit.

"Post-contact" means the period after the year 1778.

"Pre-contact" means prehistoric.

"Prehistoric" means the period prior to and including the year 1778.

"Preservation plan" means the form of mitigation that sets forth appropriate treatment of historic properties, burial sites, or human skeletal remains which are to be preserved in place.

"Presiding officer" means the chairperson of the board of land and natural resources.

"Previously identified" means burial sites containing human skeletal remains and any burial goods identified during archaeological inventory survey and data recovery of possible burial sites, or known through oral or written testimony.

"Proceeding" means the department's consideration of the relevant facts and applicable law, and action thereupon with respect to a particular subject within the department's jurisdiction, initiated by a filing, submittal, request, application, or petition and shall include but not be limited to:

- (1) The adoption, amendment, or repeal of any rule of the department, whether initiated by order, notice or by petition of an interested person; or
- (2) The administrative adjudication by the appeals panel of an appeal of a council determination as a contested case.

"Public hearing" means a hearing required by law in which members of the public may comment upon a proposed rule, application, or request.

"Reburial agreement" means an agreement, recorded with the bureau of conveyances, between the State and the landowner which involves reburial of human skeletal remains and any burial goods, and establishes the reburial site as a preservation easement in perpetuity.

"Reburial site" means any specific location where prehistoric or historic human skeletal remains and any burial goods removed from one or more sites are reburied, including any associated surface and subsurface features.

"Regular business hours" means from 7:45 a.m. to 4:30 p.m. of each day of the week except Saturday, Sunday, and holidays.

"Relocation" means the careful disinterment or collection of human skeletal remains and any burial goods utilizing procedures which are least intrusive and destructive to the human skeletal remains and any burial goods, in accordance with a department approved archaeological data recovery plan when applicable, and the reburial of the human skeletal remains and any burial goods, except where known lineal descendants decide otherwise.

"Review board" means the Hawai'i historic places review board.

"Sensitive" means a finding by the council or the review board that a department record involving location and description of historic sites including burial sites or involving human skeletal remains originating from a burial site is culturally inappropriate for public disclosure and exempt from the requirements of section 92F-12, HRS.

"Unmarked location" means with regard to a human burial, any site located outside the boundaries of a known, maintained, actively used cemetery dedicated in accordance with chapter 441, HRS. [Eff SEP 28 1996] (Auth: HRS §6E-43.5) (Imp: HRS §§6E-43, 6E-43.5, 6E-43.6, 92F-3, 92F-12, 441-2, 441-3).

2.2 Clarification of Definitions Used in This Document

2.2.1 Definition of a "Burial Site"

2.2.1.1 Different interpretations of "Burial Site"

According to Hawai'i state burial law (HAR Chapter 13-300), the term "Burial site" means:

any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface and subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

A key issue in the recent past, however, has been application of the definition of "burial site" to finds of human skeletal remains outside of a clear burial context. Specifically, the above definition does not address or clarify those circumstances in which isolated, disarticulated human skeletal remains are encountered in a disturbed context.

The definition of a burial site under Hawai‘i State Burial Law is, and has been, interpreted differently. Some argue that all human skeletal remains found during an AIS, regardless of context, are burial sites. The Office of Hawaiian Affairs (OHA) has taken this view during its review of an earlier version of this consultation protocol (see Appendix C). In line with this interpretation, there have been various instances in the past in which disturbed, disarticulated human skeletal remains from a non-burial context found during AIS investigations were treated as burial sites under Hawaii State Burial Law, with their treatment decided under the jurisdiction of the OIBC. In other recent AIS investigations in Waikīkī, however, discoveries of human skeletal remains from a non-burial context were not treated as burial sites under Hawaii State Burial Law, with their treatment decided under the jurisdiction of the SHPD.

The interpretation that discoveries of human skeletal remains should evidence purposeful interment in order to be considered a burial site has also been recently expressed by the SHPD during consultation for the preparation of this consultation protocol (see Appendix B). These differences of opinion and past treatment decisions have led to debate as well as inconsistency in the treatment of human skeletal remains from a non-burial context.

These differing interpretations have lead to differences in the treatment decision making process of human skeletal remains discovered during AIS investigations. It has lead to a dichotomy in the discussion of discoveries of human skeletal remains during AISs: burial sites versus human skeletal remains from a non-burial context. This consultation protocol describes the distinction between the two, with human skeletal remains from a non-burial context defined as disarticulated and/or fragmentary, disturbed human remains, often associated with fill sediments, whose archaeological context is better described as resulting from past disturbance than from purposeful interment.

The consultation protocol does not attempt to set a precedent with its discussion of the difference between burial sites and human skeletal remains from a non-burial context. The fact is such a precedent already exists. Given this current state of affairs, this consultation protocol attempts to formalize this distinction between burial sites and discoveries of human skeletal remains from a non-burial context, and explicitly state how this distinction will be made during the City Center AIS.

The draft consultation protocol was developed in consultation with the OIBC, SHPD, and OHA, along with others, who reviewed the text that distinguishes burial sites from discoveries of human skeletal remains from a non-burial context. As noted above, after review of this text, OHA commented that all AIS discoveries of human skeletal remains should be treated as a burial site (Appendix C). The OIBC comments on the matter (see Appendix B), were that the “gray area” between clear burial sites and clear instances of human skeletal remains from a non-burial context should be more clearly defined, and that it should be made clear that for discoveries of human skeletal remains that fall within this “gray area” the decision making process would be more heavily weighted toward treating the remains as burial sites. Based on OIBC’s comments, this protocol has attempted to do this (see discussion below, Section 2.2.1.3). Also taken into consideration by the OIBC was the effect such treatment decisions would have upon the implementation of the AIS and its trenching requirements (see discussion below; Section 2.2.1.2).

2.2.1.2 Reason for the dichotomy between “burial sites” and “human skeletal remains from a non-burial context”

In the above discussion regarding whether discoveries of human skeletal remains in a non-burial context should be considered a burial site under Hawaii state burial law, it is important to clarify the effects this determination would have upon the City Center AIS and its impact on *iwi kūpuna*. Based on prior archaeological research in the City Center area, it is likely that discoveries of human skeletal remains in a non-burial context will be more prevalent than the discoveries of burial sites. Should all discoveries of human skeletal remains, regardless of context, be deemed burial sites, the number of burial sites located during the City Center AIS is likely to be significantly larger. As outlined in the AIS Plan for City Center, each of these burial sites will require additional excavation to attempt to locate an engineering “solution” whereby the burial can be preserved in place. With this larger number of burial sites, the need for additional AIS testing would be increased to investigate potential column and utility relocation areas. This would likely lead to significant amounts of excavation outside the project foot-print based on preliminary engineering. This in turn could lead to the discovery and disturbance of additional burial sites that would not have been otherwise disturbed by the project.

In discussions with NHOs, individuals, and agencies during the preparation of the City Center AIS Plan (see Appendix B), a common theme was that the AIS investigation should be confined to the preliminary engineering project footprint—that the AIS should not investigate areas that will not be directly disturbed by the project. The impetus for these comments was the desire of the consulting parties that the project not disturb burials sites/human skeletal remains that would otherwise not be disturbed by the project. If AIS discoveries of human skeletal remains from a non-burial context are deemed to be burial sites under Hawaii state burial law, then the necessary expansion of the AIS investigation outside the current preliminary engineering footprint will likely be much greater. Accordingly, additional burials/human skeletal remains will likely be disturbed that otherwise would not have been disturbed by project construction. This increased potential for project disturbance of *iwi kūpuna* is the primary reason for the consultation protocol’s recommendation that a distinction between burial sites and discoveries of human skeletal remains from a non-burial context be delineated.

2.2.1.3 Distinction between “burials sites” and “human skeletal remains from a non-burial context”

Finds of isolated human skeletal remains not in a burial context may be expected to be encountered within the HHCTCP project area, and will likely be more commonly encountered than in situ burials. It is important, therefore, to identify proactively the various types of *iwi kūpuna* finds that may be encountered during the AIS and clarify the boundaries of the “gray area” dividing clear-cut burial sites and clear-cut non-burial sites comprised of disarticulated human skeletal remains not in a burial context. On the one extreme are incontrovertible burial sites consisting of full, articulated human skeletal remains within a burial context (such as within a discernable burial pit feature and associated with burial goods). On the other extreme are those finds consisting of isolated *iwi* or bone fragments within imported fill material that was likely brought from some other location in the relatively recent past. The one end of the spectrum consists of a clear inhumation and purposeful interment and committal of the remains of an individual or individuals to the earth. The other end of the spectrum clearly does not constitute purposeful interment, but rather reflects the result of past disturbance. A range of potential types

of *iwi kūpuna* finds lies in-between these two extremes. Possible scenarios of human skeletal remains finds include, but are not limited to:

1. An isolated, disarticulated *iwi* (human bone) or bone fragment within imported fill material,
2. An isolated, disarticulated *iwi* or bone fragment within disturbed local sediment,
3. Several, disarticulated *iwi* or bone fragments within close proximity to each other within fill material
4. Several, disarticulated *iwi* or bone fragments within close proximity to each other within disturbed local sediment
5. Two or more isolated, but articulated, *iwi*
6. Disarticulated human skeletal remains within a discrete feature
7. Articulated human skeletal remains within a discrete feature (either extended, flexed, partially-flexed, or within coffin remnants)

For the purposes of facilitating treatment decisions, this consultation protocol recommends that the following discoveries of human skeletal remains during the City Center AIS work be considered clear “burial sites”: 1) two or more isolated, articulated *iwi*; 2) disarticulated human skeletal remains within a discrete feature; and 3) articulated human skeletal remains within a burial context. Regarding isolated, but articulated *iwi*, it is considered probable that any two or more bones in anatomical position could represent a partial burial, and as such should be considered a “burial site”. In addition, it is considered that bones do not necessarily need to be in anatomical position in order to constitute a burial, so long as the bones are encountered within a discrete interment feature. It is possible that the *iwi* may have been relocated at a later date (a secondary burial) or arranged intentionally in a non-anatomical position, for example, a traditional native Hawaiian bundle burial. Regarding bundle burials and their association with human sacrifice, June Cleghorn in her 1987 Masters’ thesis stated that:

“...this process [human sacrifice preparation] does result in disarticulated skeletons, a common characteristic of Hawaiian burials. The bundle burials would result from the burial of the long bones, usually without the skull, once their use as mementos or relics had ended.” (Cleghorn 1987:49)

It was also a not uncommon practice during the pre-contact period for family members to “secretly exhume the body of a beloved husband or wife, and remove the four leg bones and the skull...” (Malo 1854:98). Such burials could evidence distinct disturbance and disarticulation.

This protocol recommends that the following finds of human skeletal remains should be considered as indeterminate finds, or “gray area” finds: 1) an isolated and disarticulated *iwi* or bone fragment found within disturbed local sediments; and 2) several, disarticulated *iwi* or bone fragments within close proximity to each other found within a disturbed local sediment. Other, as yet unidentified, types of human skeletal remains finds may also fall into this “gray area”. In

both of the above cases, *iwi* found within disturbed local sediments may indicate the previous disturbance of a burial within the immediate vicinity. Further archaeological investigations would likely be necessary in both cases in order to make a determination as to whether the find constitutes a burial site or human skeletal remains in a non-burial context.

In the case of all *iwi kūpuna* finds, the City, through its archaeological consultant, will provide SHPD with documentation and recommendations so that an informed decision can be made regarding whether or not a discovery of human skeletal remains should be designated a burial site or not. These decisions will be made on a case by case basis by SHPD. It may require additional archaeological investigation (e.g. additional controlled excavation in the vicinity of the discovery, or additional ground penetrating radar investigation), to supply additional information with which to make the decision. Following the direction of the OIBC, this protocol recommends that any “gray area” cases should be more heavily considered as possible burial sites unless there is more compelling evidence that the identified human remains are from a non-burial context.

The various potential types of *iwi kūpuna* finds are outlined within Table 1 below, including recommendations whether the find constitutes a “burial site” or other category, and the resultant actions to be taken.

Table 1. Types of Possible *Iwi Kūpuna* Finds and Resultant Actions

Type of <i>Iwi Kūpuna</i> Find	Burial Category	Resultant Action
An isolated, disarticulated <i>iwi</i> or bone fragment within imported fill material	Human skeletal remains from a non-burial context	With appropriate documentation, confirmation with SHPD that the find does not constitute a burial site under HAR Chapter 13-300. Consult following process outlined in Section 4
Several, disarticulated <i>iwi</i> or bone fragments within close proximity to each other within fill material	Human skeletal remains from a non-burial context	With appropriate documentation, confirmation with SHPD that the find does not constitute a burial site under HAR Chapter 13-300. Consult following process outlined in Section 4
An isolated, disarticulated <i>iwi</i> or bone fragment within disturbed local sediment	“Gray Area”	Consultation with the SHPD. Possible further archaeological investigation. SHPD shall make determination whether the find constitutes a burial site based on available information. Consult following process outlined in Section 4

Several, disarticulated <i>iwi</i> or bone fragments within close proximity to each other within disturbed local sediment	“Gray Area”	Consultation with the SHPD. Possible further archaeological investigation. SHPD shall make determination whether the find constitutes a burial site based on available information. Consult following process outlined in Section 4
Two or more isolated, but articulated, <i>iwi</i>	Burial Site	Notify SHPD. Consult following process outlined in Section 4
Disarticulated human skeletal remains within a discrete feature	Burial Site	Notify SHPD. Consult following process outlined in Section 4
Articulated human skeletal remains within a discrete feature (either extended, flexed, partially-flexed, or within coffin remnants)	Burial Site	Notify SHPD. Consult following process outlined in Section 4

For this consultation protocol, the determination whether *iwi kūpuna* finds constitute a “burial site” or are considered human skeletal remains not from a burial context, will also determine the type of consultation process that is initiated. Consultation under this protocol will be carried out in both circumstances; however, the consultation for burial sites will be more immediate and intensive. As discussed in Sections 4 and 5, below, the consultation process includes notification of consulting parties of the find and consultation regarding treatment of the *iwi kūpuna*. Treatment decisions for any *iwi kūpuna* finds will ultimately be decided by the SHPD and/or the OIBC and any lineal or cultural descendents following the procedures of HAR Chapter 13-300.

This consultation protocol and its consultation process shall be initiated upon the discovery of any human skeletal remains finds that are reasonably demonstrated to be Native Hawaiian (*iwi kūpuna*). For human skeletal remains where there is a reasonable belief that the remains are not Native Hawaiian (regardless if the remains constitute a burial site or not), this consultation protocol will not apply. Section 3.2.2, below, describes the process whereby SHPD makes its ethnicity determinations for all discoveries of human skeletal remains. Detailed documentation of any human skeletal remains shall be provided by the City to SHPD to support SHPD’s ethnicity determination.

2.2.2 Ethnicity Determination

Hawaii State law places a good deal of import in terms of treatment on whether skeletal remains are “Native Hawaiian” or not. Ethnicity determination is rarely certain, especially when human skeletal remains are incomplete and fragmentary. It can be inconclusive even if the human skeletal remains are examined in some detail (osteological analysis). In practice, the best decision is made based on the information available.

HAR §13-300-31 (g) specifies:

An evaluation of ethnicity shall be made by the department [SHPD] for all human skeletal remains situated or formerly situated at a burial site. The following evidence shall be gathered and considered accordingly:

- (1) Oral or written evidence relating to the human skeletal remains or burial site evaluated by department cultural specialists, including but not limited to:
 - (A) Histories and traditions associated with specific places and families;
 - and
 - (B) Genealogies.

Where oral or written evidence establishes ethnicity by a reasonable belief, the evaluation ends. Where the evidence does not establish ethnicity by reasonable belief, paragraph (2) shall apply;

- (2) Archaeological evidence relating to the human skeletal remains or burial site gathered by a professional archaeologist or archaeological firm meeting department minimal qualifications and standards. Evidence shall be evaluated by department archaeologist including but not limited to:
 - (A) Burial features including burial goods or other indicators of burial treatment;
 - (B) Where a cultural layer is associated with a burial site, the nature of its contents including artifacts and food remains; or
 - (C) The age of radiocarbon dates associated with the cultural layer in which human skeletal remains are situated.

Where the archaeological evidence establishes ethnicity by a reasonable belief, the evaluation ends. Where the archaeological evidence alone does not establish ethnicity, but when considered together with any oral or written testimony, ethnicity is established by reasonable belief, the evaluation ends. Where the evidence does not establish ethnicity by reasonable belief, paragraph (3) shall apply;

- (3) Osteological evidence, to be gathered by a physical anthropologist meeting department minimal qualifications, in accordance with section 13-300-32. Where osteological evidence fails to suggest ethnicity by reasonable belief, appropriate treatment of the human skeletal remains shall be determined by the department.
 - (h) Where a previously identified burial site is proposed to be preserved in place, no osteological or disturbing archaeological investigation shall occur, unless authorized by the department.
 - (1) Where oral or written testimony does not establish ethnicity by reasonable belief, archaeological surface evidence and any pre-existing archaeological evidence from the burial site or pre-existing osteological evidence from burial sites in the surrounding area shall be reviewed by the department.
 - (2) Where human skeletal remains are reasonably believed to be Native Hawaiian, the burial site shall be so classified and the council shall determine appropriate treatment.
 - (3) Where human skeletal remains are reasonably believed to be non Native Hawaiian, the burial site shall be so classified and the department shall determine appropriate treatment.
 - (4) Where existing evidence fails to clarify ethnicity by a reasonable belief, appropriate treatment of the human skeletal remains shall be determined by the department.
- [Eff SEP 28 1996] (Auth: HRS §§6E-43.5, 91-2) (Imp: HRS §§6E-43, 6E-43.5, 43.6)

2.2.3 Geography of Cultural Descendancy

The definition of "Cultural descendant" cited above means with respect to Native Hawaiian skeletal remains, a claimant recognized by the council after establishing genealogical connections to Native Hawaiian ancestors who once resided or are buried or both, in the same ahupua'a or district in which certain Native Hawaiian skeletal remains are located or originated from. In the past the SHPD has been the decider of the appropriate understanding of "...ahupua'a or district..."

It is in the public interest to clarify the geography of descendancy status. In recent SHPD decisions, descendancy recognition has been granted to such geographic areas as *ahupua'a* of Kewalo (OIBC May 2011), *ahupua'a* of Kawaiaha'o (December 2009), and Makiki Ahupua'a (in the case of Walmart; March 2008) as well as prior recognitions to Waikiki, Kaka'ako and Honolulu. Understandings of the extent of geographic place names have changed over time and may vary widely even among informed parties. For the purposes of the HHCTCP City Center Archaeological Inventory Survey, the Kamehameha Schools Hawaiian Studies Institute 1987 map shall be utilized to delineate geographic areas (Figure 8 and Figure 9).

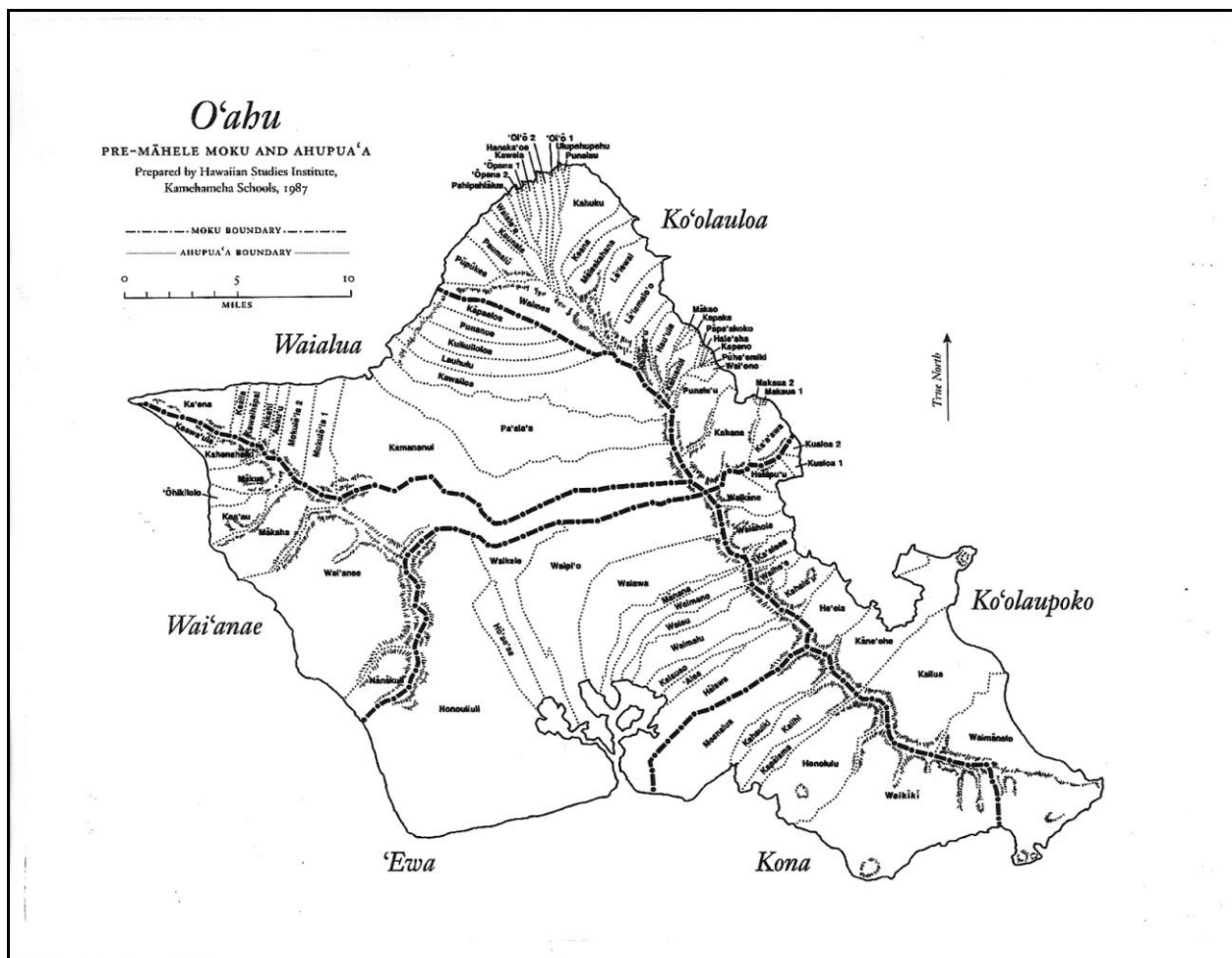


Figure 8. Proposed geographic basis for recognition as a descendant to burials (Kamehameha Schools Hawaiian Studies Institute 1987 O'ahu Ahupua'a Map)

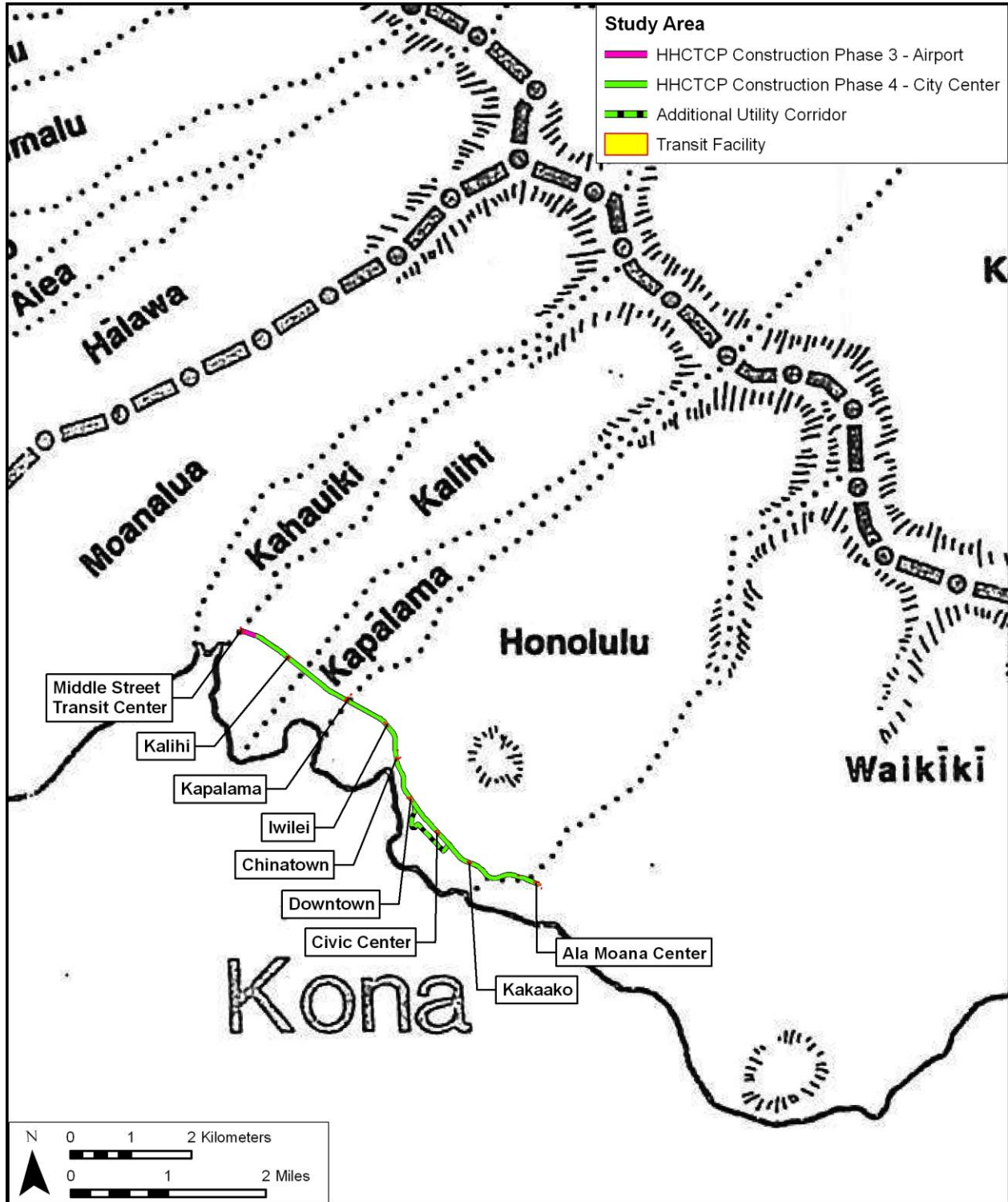


Figure 9. Close-up of proposed geographic basis for recognition as a descendant to burials, with overlay of the HHCTCP consultation protocol area (City Center)

Section 3 Early Identification, Notification, and Inclusion of Lineal and Cultural Descendants and NHOs

3.1 Initial Outreach Prior to the Beginning of HHCTCP City Center Archaeological Inventory Survey Fieldwork

The updating of a contact list of potentially concerned parties (including all lineal and cultural descendants of burials in the lands of concern and Native Hawaiian Organizations [NHOs]) is a significant aspect of this protocol and an updated list is appended as Appendix A. This list was compiled for the protocol from City and SHPD lists of HHCTCP interested parties and prior lists of recognized lineal/cultural descendants. The cultural resource consulting firm, Aukahi, prepared this updated list and it will be further updated by the City as appropriate during the course of the archaeological inventory survey and subsequent construction work. It is the intention of the City that this list be inclusive.

Prior to the beginning of the archaeological inventory survey, an effort shall be made to contact all parties on the contact list (at least two documented efforts at contact) to determine whether they want to be included in the notification process (and if so how). It will be made clear that any party has the option to “opt in” to the notification process at any point during the AIS, subsequent construction, or any subsequent resolution of *iwi kūpuna* treatment. This initial outreach will also make clear there is an option for notification of developments limited to any specific geographic areas of concern. This “opt in” procedure is in keeping with the most recent guidance from Ms. Phyllis “Coochie” Cayan and the SHPD Burials Program.

This initial outreach will also enquire regarding wishes for any blessing or ceremony to be performed upon discovery of *iwi kūpuna* burial sites, and if so, who would be involved and invited to the blessing or ceremony. Concerned parties would be afforded an opportunity to address any other concerns they may have and these responses will be compiled and reported within the project’s burial plans.

This initial outreach effort will seek to ascertain the preferred method of consultation (e-mail, regular mail, and/or telephone) with which to reach out to concerned parties.

3.2 Consultation During Survey, Construction and Regarding any Treatment of *Iwi Kūpuna*

In the event of the discovery of *iwi kūpuna* within a burial site context (see Section 2.2.1) during either the archaeological inventory survey or the construction phase archaeological monitoring program, a burial discovery notice shall be prepared by the archaeological consultant for distribution in a timely manner to all interested parties. The notice shall include: a description of the burial context, background information, TMK location, any applicable Land Commission Awards numbers (LCAs), and any other relevant information. The City shall be responsible for the dissemination of this notice. The timeline for notification of any *iwi kūpuna* burial finds shall be as follows:

- 1) An e-blast (mass email notification system) notification shall be disseminated and a project website update shall be posted within two working days following the initial consultation with SHPD and OIBC representative regarding discovery of *iwi kūpuna*.
- 2) Telephone and post notification of the find shall be made within one week following the initial consultation with SHPD and OIBC representative to those concerned parties who do not have access or do not choose to use electronic or internet methods.

In anticipation of potential finds, the project website should clearly indicate the locations for updated information. In addition, the project website shall provide a contact so that more sensitive information about specific finds can be related to concerned parties.

In addition, a weekly e-newsletter and project website update shall be prepared and posted every Monday, identifying any non-burial *iwi* or bone fragment finds documented during the week prior. Such information shall include: any disarticulated, fragmentary *iwi* finds outside of a burial site context as well as any faunal skeletal remains finds, so as to prevent potential misunderstandings or miscommunication regarding any skeletal finds.

During this consultation process, the SHPD will receive notifications of any and all potentially significant developments.

3.3 Descendant Access to a Burial Site

Safety concerns and potentially restricted access to private property are important factors that may hinder *iwi kūpuna* burial site access. The City's transit team will attempt to facilitate reasonable access by request of any concerned parties to identified *iwi kūpuna* burial sites.

For the purposes of providing cultural protocol for the *iwi kūpuna*, and in order to facilitate access to burial sites, the consultation process shall include the coordination of *ahupua'a* meetings, in which the families of each *ahupua'a* shall be given the opportunity to discuss the determination of *ahupua'a* representatives. If selected, these *ahupua'a* representatives may provide cultural protocol in the form of blessings or other ceremonies for any *iwi kūpuna* discovered within their *ahupua'a*.

Section 4 Workflow of Actions Prior to and upon Identification of *Iwi Kūpuna* during AIS and Subsequent Construction

4.1 Workflow of Actions Prior to and upon Identification of *Iwi Kūpuna* during AIS

Upon positive archaeologist determination of the presence of human skeletal remains during the Archaeological Inventory Survey for the HHCTCP City Center, the following workflow of actions shall take place:

- 1) The first priority will be for the on-site archaeologist field director and the excavation foreman on-site to re-assess the safety of the work situation and the safety of the remains themselves,
- 2) Notifications by telephone and follow-up e-mail shall immediately be made to the following entities:
 - a. The SHPD
 - b. The PB/City
- 3) The archaeological contractor will gather the available information regarding the discovery's archaeological context and location. This information will be used to consult with SHPD to determine:
 - a. Whether fieldwork will continue to better define the extent and context of finds in the excavation unit
 - b. Whether the find constitutes a burial site or human skeletal remains from a non-burial context
 - c. Whether or not the remains are reasonably believed to be Native Hawaiian (*iwi kūpuna*)
- 4) Temporary treatment of human skeletal remains from a non-burial context:
 - a. No human skeletal remains will be disinterred at the time of discovery,
 - b. Following consultation with SHPD, the City, and an OIBC Kona representative (or other OIBC member appointed by the OIBC), the treatment of human skeletal remains not from a burial context will be decided by SHPD on a case by case basis. Should SHPD determine that relocation of the remains is appropriate, temporary curation shall be arranged, with the intent that the treatment of the skeletal remains will take place within a reasonable time-frame. A secure, climate-controlled temporary curation facility meeting federal curation standards will be provided by the City within the project corridor at the Iwilei Station. All disinterred *iwi* not from a burial context removed for

temporary curation shall first be wrapped in unbleached cotton muslin and then placed in a clearly labeled *lauhala* (woven *hala* leaf) basket.

- c. The discovery of human skeletal remains from a non-burial context will be reported to the consulting parties through the project web-site and the weekly e-newsletter. A weekly e-newsletter and project website update shall be prepared and posted on the project web-site every Monday, detailing any non-burial *iwi kūpuna* finds documented during the week prior. Such information shall include: any disarticulated, fragmentary *iwi* finds outside of a burial site context and any faunal skeletal remains finds.
- d. SHPD shall make the final treatment decision for the human skeletal remains. This treatment decision will be implemented by the City.

5) Temporary treatment of *iwi kūpuna* from a burial site:

- a. Any Native Hawaiian Burials identified will be covered with unbleached cotton muslin, then covered with available local sediments, then covered with plywood, and then the excavation will be backfilled and repaved as appropriate, unless otherwise specified by the SHPD in consultation with the Department of Transportation (for State highways) and the City Department of Transportation Services (for City & County roads) over safety issues,
- b. No associated burial goods (*moepu*) will be moved without SHPD approval as per HRS 6E-43 (a),
- c. If located on public lands, the Department of Transportation (for State highways) and the City Department of Transportation Services (for City & County roads) will be promptly consulted regarding safety concerns with any proposed short-term special treatment of the area over the *iwi kūpuna*,
- d. If located on private lands the land-owner and/or the land owner's lessee will be notified,
- e. The burial site will be stabilized and left undisturbed, to the extent possible considering the burial location and safety issues, until final burial treatment is decided through the burial treatment decision making process following the completion of the AIS.
- f. In consultation with SHPD a decision will be made regarding the need for additional AIS investigation in the vicinity of the burial site
- g. Consultation will occur promptly with the OIBC regional representative and Chair (if requested)
- h. Notification of *iwi kūpuna* burial finds will be promptly disseminated to concerned parties on the consulting contact list, including any possible lineal and/or cultural descendents:

- 1. An e-blast notification shall be disseminated and a project website update shall be posted within two working days following the initial

consultation with SHPD and OIBC representative regarding discovery of *iwi kūpuna*. The notification shall include background and contextual information of the find, TMK information, any applicable LCA numbers, and any other relevant information

2. Telephone and post notification shall be made within one week following the initial consultation with SHPD and OIBC representative to those concerned parties who do not have access or do not choose to use access to the web
 - i. Consultation will occur promptly with project engineers to determine the nature of potential short and long-term project-related impacts in the immediate vicinity and the prospect for avoidance. Avoidance may include relocation of columns, change of column design to or from a center alignment to straddle bent or other alternatively-supported design, modification of span length, and alternate utility locations,
 - j. The OIBC will be informed at their immediately following monthly meeting of all *iwi kūpuna* discoveries,
 - k. Consultation meetings will be held with any concerned possible lineal and/or cultural descendants to determine appropriate burial treatment which will be codified within a burial treatment plan for the review of concerned descendants, the SHPD and the OIBC. Individuals with lineal and/or cultural ties to the ahupua'a in which the find is located shall have greater say in treatment determination than those without lineal ties.

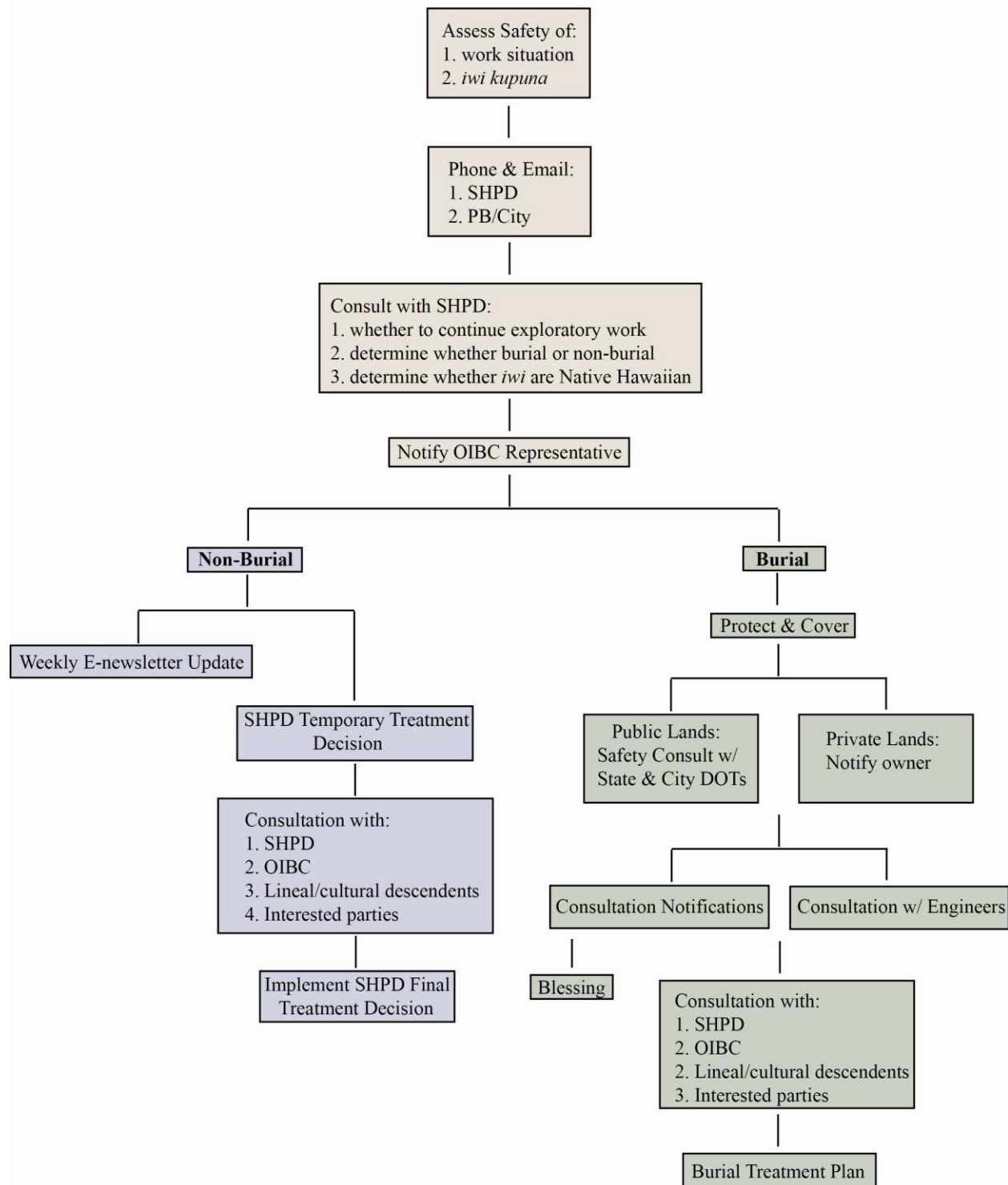
Final decision over appropriate burial treatment will be made by the OIBC and SHPD through the process outlined in HAR Chapter 13-300-33. The City shall bear the responsibility for treatment as codified within OIBC and SHPD accepted plans, including submittal of appropriate information to the Bureau of Conveyances.

4.2 Workflow of Actions Prior to and Upon Identification of *Iwi Kūpuna* During Subsequent Construction

Upon positive archaeologist determination of the presence of human skeletal remains during the construction phase of the HHCTCP City Center, which shall be overseen by an archaeological monitoring program, the following workflow of actions shall take place:

- 1) The first priority will be for the on-site archaeologist and the construction foreman on-site to re-assess the safety of the work situation, and the safety of the remains themselves,
- 2) All human skeletal remains over 50 years old and any associated burial goods found during construction will be treated as inadvertent finds under Hawai'i State burial law (refer to HAR 13-279-6(b)) and fall under the jurisdiction of the SHPD (refer to Section 2.6.2, HAR 13-300-40(a)),

AIS Finds: Workflow of Actions



- 3) The SHPD will be immediately notified by telephone and follow-up e-mail by the archaeological subcontractor. If the discovery occurs on Saturday, Sunday, or holiday the report also shall be made to the Division of Conservation and Resource Enforcement (DOCARE) (as per §13-300-40 (b) (1)).
- 4) The archaeological contractor will gather the available information regarding the discovery's archaeological context and location. This information will be used to consult with SHPD to determine:
 - a. Whether fieldwork will continue to better define the extent and context of finds in the excavation unit
 - b. Whether the find constitutes a burial site or human skeletal remains from a non-burial context
 - c. Whether or not the remains are reasonable believed to be Native Hawaiian (*iwi kūpuna*)
 - d. An SHPD site inspection will be encouraged and the prospect of an SHPD site inspection in the short-term will be ascertained,
 - e. The guidance of the SHPD regarding the potential collection and disposition of any disturbed human skeletal remains will be ascertained,
 - f. The guidance of the SHPD regarding any further exploration of the circumstance of interment will be ascertained,
 - g. The directives of the SHPD regarding any short-term measures of collection and disposition of any disturbed human skeletal remains and/or further exploration of the archaeological context will be followed through on promptly as safety and time constraints permit,
- 5) The archaeological subcontractor (in co-ordination with the City, the SHPD, and the contractor(s)) shall assume responsibility to assure that all construction activity in the immediate area of the human skeletal remains ceases and that appropriate action to protect the integrity and character of the remains from damage is undertaken
- 6) The PB/City contact(s) will be immediately notified by telephone and follow-up e-mail.
- 7) The prime contractor point-of-contact will be immediately notified by telephone and follow-up e-mail.
 - a. It shall be the responsibility of the prime contractor to notify any sub-contractors as may be appropriate.
- 8) The County Coroner will be notified (as per §13-300-40 (b) (2)),
- 9) The Honolulu Police Department will be notified (as per §13-300-40 (b) (3)),
- 10) The archaeological contractor will make an offer to the SHPD in writing (e-mail okay) to assume the responsibility for contacting the OIBC regional (Kona) representative and OHA (see Section 1.6.2 above and/or HAR 13-300-40 (c) (6) and,

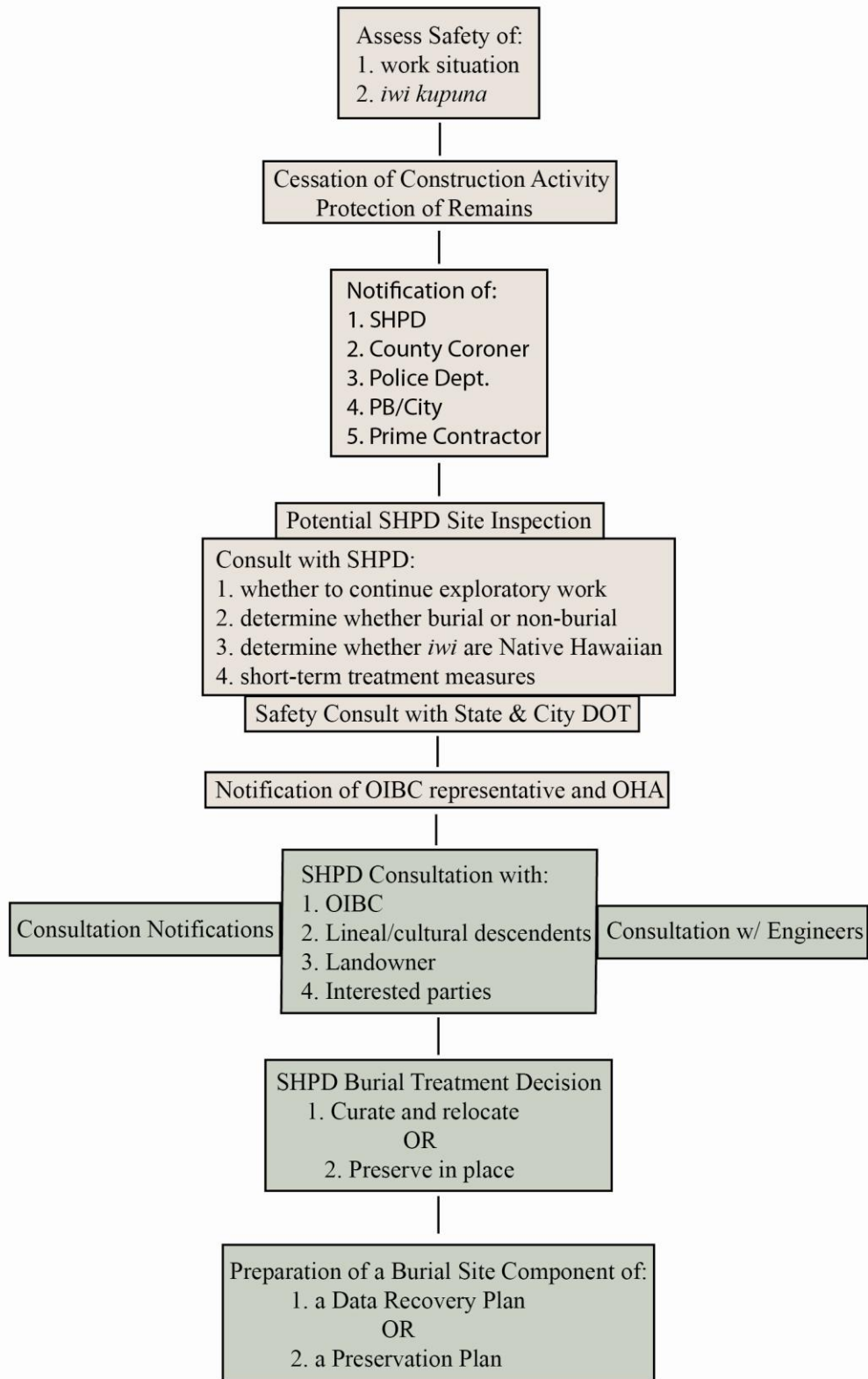
if appropriate, the archaeological contractor will follow through in contacting the OIBC Kona representative(s) and OHA

- 11) The Department of Transportation (for State highways) and the City Department of Transportation Services (for City & County roads) will be promptly consulted regarding safety concerns with any proposed short-term special treatment of the area over the *iwi kūpuna*,
- 12) Notification of *iwi kūpuna* burial finds will be promptly disseminated to concerned parties on the consulting contact list, including any possible lineal and/or cultural descendents. The notification process delineated for the AIS (see above) shall apply for the archaeological monitoring program:
 - a. For *iwi kūpuna* determined by the SHPD to be burial sites, an e-blast notification shall be disseminated and a project website update shall be posted within two working days following the initial consultation with SHPD and OIBC representative regarding discovery of *iwi kūpuna*. The notification shall include background and contextual information of the find, TMK information, any applicable LCA numbers, and any other relevant information
 - b. For *iwi kūpuna* determined by the SHPD to be burial sites, telephone and post notification shall be made within one week following the initial consultation with SHPD and OIBC representative to those concerned parties who do not have access or do not choose to use electronic or internet methods
 - c. For *iwi kūpuna* determined by the SHPD to be from a non-burial context, a weekly e-newsletter and project website update shall be prepared and posted every Monday, detailing any non-burial *iwi* finds documented during the week prior. Such information shall include: any disarticulated, fragmentary *iwi* finds outside of a burial site context and any faunal skeletal remains finds

Note: Inadvertent discoveries of human skeletal remains, whether from burial sites or discoveries of human skeletal remains from a non-burial context, are treated the same under Hawaii State Burial Law pertaining to inadvertent discoveries. This section of the consultation protocol only makes a distinction between burial sites and discoveries of human skeletal remains from a non-burial context to distinguish how the information about these inadvertent discoveries will be disseminated to the consulting parties.
- 13) The archaeological subcontractor shall contact the point of contact for engineering to discuss options to move the location of the proposed infrastructure leaving the burial in place.
- 14) The OIBC will be informed at their immediately following monthly meeting of all discoveries,
- 15) Decision-making for disposition will be made by the SHPD in consultation with the Kona OIBC representative and concerned lineal and/or cultural descendents as appropriate, following HAR Chapter 13-300-40.

- 16) A secure, climate-controlled facility will be provided by the City in the immediate vicinity of the project corridor should interim curation of the remains be necessary. Curation shall be temporary, with the intent that the treatment of the skeletal remains will take place within a reasonable time-frame.
- 17) It shall be the responsibility of the City and archaeological contractor to prepare any Burial Site Component of a Data Recovery Plan(s) and/or Burial Site Component of a Preservation Plan(s) for the review and approval of the SHPD.
- 18) The City shall bear the responsibility for treatment as codified within SHPD accepted plans including submittal of appropriate information to the Bureau of Conveyances.

Inadvertent Discoveries: Workflow of Actions



Section 5 Pro-Active Consideration of Possible *Iwi Kūpuna* Relocation Areas

Treatment of any *iwi kūpuna* that may be encountered will be decided on a case-by-case basis in consultation with appropriate parties. Treatment of *iwi kūpuna* is a matter for the SHPD, OIBC, lineal and/or cultural descendants, and other concerned parties. Several parties consulted (including Native Hawaiian *kahu*, the Royal Order of Kamehameha, the Office of Hawaiian Affairs, and members of the O'ahu Island Burial Council) have recommended the prudence of pro-active, advance consideration of possible re-interment locations should burial relocation be necessary. These potential burial reinterment locations will also serve as potential reinterment locations for any collected human skeletal remains from non-burial contexts.

5.1 Considerations in Selection of Possible Relocation Areas

The considerations in selection of possible relocation areas should include the following factors:

- Any burial relocation area for consideration needs to be safe and secure and afford the concerned families reasonable long-term access (considering possible future development in the immediate vicinity),
- Any burial relocation area for consideration should be close to where the *iwi* were originally interred with particular attention to keeping the *iwi* in the same traditional area (within the same *ahupua'a*),
- Any burial relocation area for consideration should be an area that can be formally recorded with the Bureau of Conveyances as a burial preserve in perpetuity – a condition that would run with the deed for the parcel in perpetuity,
- The general ambiance of any burial relocation area for consideration should be regarded as generally “appropriate” by concerned parties. This may include: A) consideration of a quieter area in terms of noise and traffic flow patterns, B) an area that may be removed from construction, utility, and toilet facilities, C) an area in which suitable landscaping can be maintained

5.2 Possible *Iwi Kūpuna* Relocation Areas Suggested for Preliminary Consideration

Three “types” of areas for the possible consideration of *iwi kūpuna* relocation are recommended: 1) Transit Stations, 2) existing *iwi kūpuna* relocation facilities, and 3) City Parks.

5.2.1 Transit Stations

The entry or ground level facilities of Transit Stations (and associated ancillary facility areas) have the following advantages: 1) they will be owned by the City, 2) they are areas that are

relatively accessible and safe, and 3) they will have areas in which there are likely to be landscaping and landscape maintenance programs.

Disadvantages may include: 1) some sites are quite small and are likely to be congested with a hubbub of human activity and related noise, 2) these transit related facilities will have a relatively high density of subsurface infrastructure (possibly requiring maintenance) as well as restroom facilities, and 3) these areas may be under active construction for some time following any *iwi* discoveries needing to be reinterred and may thus not be available for prompt re-interment.

The following table provides a preliminary summary of stations for consideration and possible refinement.

Table 2. Summary of Stations for Consideration as Re-Burial Location

Station	Traditional Place*
Middle Street Transit Center	Kaliawa, Kalihi Ahupua'a (following LCA No. 818)
Kalihi	Mokauea, Kalihi Ahupua'a (following LCA No. 6450)
Kapālama	Iwilei, Kapālama Ahupua'a (Honolulu) (following LCA No. 1034)
Iwilei	<u>Kūwili</u> , Iwilei (Honolulu) (following LCA No. 1089)
Chinatown	Kapu'ukolo, Honolulu Ahupua'a (following LCA No. 170)
Downtown	Kuloloia (reef) Honolulu Ahupua'a (following 'Ī'ī)
Civic Center	Pu'unui, Ka'ākaukukui ("Kaka'ako") (following LCA No. 7712 B)
Kaka'ako	Kukuluāe'o, Honolulu ("Kaka'ako") (following LCA No. 10463)
Ala Moana Center	Kālia(kai) Waikīkī (following LCA No. 100 F.L.)

*Note: Designations of "appropriate" traditional place names are particularly prone to a variety of opinions and spellings. The present listing follows Land Commission Award designations – a diversity of perceptions of appropriate land name designations is a given.

5.2.2 Existing *Iwi Kūpuna* Relocation Facilities

Five existing relocation facilities are known in relatively close proximity to the project corridor of concern:

1. The Kalihi-Pālama Bus Facility Re-Interment Facility

The burial preserve at the Kalihi-Pālama Bus Facility is understood to be specific to a specific family (the Nahinu Family) and appears to have little room for expansion (Figure 10 and Figure 11). It also lies more than 200 meters *mauka* of the transit alignment. Any potential use of this

facility would be based on the results of consultation with the Nahinu Family. Use of the facility would only be considered if the Nahinu Family were in accord.

2. The Chinatown Re-Interment Facility on Nimitz

The Chinatown Re-Interment Facility on Nimitz (Figure 12 and Figure 13) is believed to lie on private property. This location would require further research if desired as a relocation option.

3. The Mother Waldron Park Re-Interment Facility

The Mother Waldron Park Re-Interment Facility (Figure 14 and Figure 15) is understood as on City Park land. This location may be a viable option for expansion or enlargement.

4. The Ko'olani Phase I Re-Interment Location

The Ko'olani Phase I Re-Interment Location is understood as on private property and under the existing Ko'olani (Phase I) tower construction. This location would require further research if desired as a relocation option.

5. The Queen Street Extension Re-Interment Facility

The Queen Street Extension Re-Interment Facility (Figure 16 and Figure 17) is understood to be under the control of the State (HCDA). The present crypts are understood to have been overbuilt somewhat to potentially include later discoveries. This location may be a viable option.

5.2.3 City Parks

City Parks have the advantages of: 1) being already owned by the City, 2) being relatively numerous (hence, as a generalization relatively close to any possible find areas), 3) having areas that are relatively accessible, safe, and quiet, 4) having areas in which there is already landscaping and a landscape maintenance program, and 5) could in theory be prepared to receive any *iwi* relatively quickly. Additional discussion with the City and County of Honolulu Department of Parks and Recreation is necessary to determine possible locations that may be acceptable.



Figure 10. Burial preserve at the Kalihi-Pālāma Bus Facility, view to southwest



Figure 11. Photograph of burial preserve memorial plaque, view to northwest



Figure 12. Chinatown Re-Interment Facility on the *mauka* side of Nimitz just east of River Street on the Nimitz side of Chinatown Municipal Parking, view to northwest



Figure 13. Close-up of the Chinatown Re-Interment Facility on the *mauka* side of Nimitz just east of River Street on the Nimitz side of Chinatown Municipal Parking, view to north



Figure 14. Mother Waldron Park Re-Interment Facility at the *makai/‘ewa* corner of Halekauwila and Cooke streets, view to southeast



Figure 15. Close-up of Mother Waldron Park Re-Interment Facility at the *makai/‘ewa* corner of Halekauwila and Cooke streets, view to south



Figure 16. General view of Kolowalu Park (Queen Street Extension Re-Interment Facility in background), view to southwest

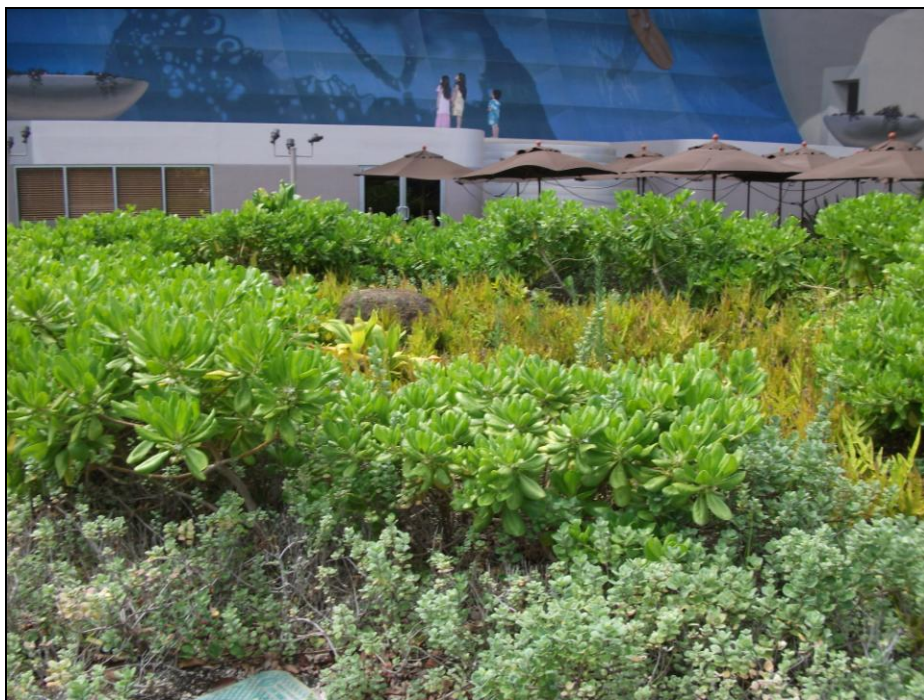


Figure 17. Queen Street Extension Re-Interment Facility, view to north

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Appendix A HHCTCP City Center Consulting Contact List

As an important part of the development of a consultation protocol for *iwi kūpuna* finds during the HHCTCP City Center (Construction Phase 4), an updated contact list of potentially concerned parties was compiled, including all lineal and cultural descendents of burials in the lands of concern and Native Hawaiian Organizations (Table 1). The compilation of this updated contact list was a lengthy process and entailed considerable research and multiple cross-checking of information. The process proceeded through the following steps:

- 1) Starting from the two Programmatic Agreement (PA) lists of consulting contacts, certain deletions and corrections were made, the status of the listed parties was added (if listed in the PA), and the correct names for all organizations were added (i.e. churches, Native Hawaiian Organizations, etc.),
- 2) Cultural descendents were added to the list, based on a list provided by the SHPD,
- 3) A further PA database list was examined and cross-checked,
- 4) The e-blast database used during the consultation for the City Center AISP preparation was examined and additional names and contact information were added,
- 5) A copy of the latest contact information for all of the Hawaiian Civic Clubs was examined and the information added or corrected,
- 6) The cultural descendants list was again updated from a list of the most up-to-date information provided by the SHPD genealogist, including the most recently recognized cultural descendents as of the last OIBC meeting (June 8, 2011),
- 7) A record of all meetings held with groups and individuals on the contact list shall be added in the final consultation protocol.

Table 1. Contact List for Consultation Protocol for *Iwi Kūpuna*

Code	PA-type	Organization	Job Title	Full Name
10	Claimant/Descendant	former OIBC Chair, Kupuna		A. Van Horn Diamond
11	Claimant/Descendant	O'ahu Island Burial Council	Ko'olaupoko	Aaron D. Mahi
99	Elected Officials	State House	The Honorable	Aaron Johanson
10	Claimant/Descendant			Adam Scott Hai Jr.
10	Claimant/Descendant			Adrian Kealoha Keohokalole
10	Claimant/Descendant			Ali'ikaua Kaleikini
11	Claimant/Descendant	O'ahu Island Burial Council	Waianae	Alice Greenwood
03	NHO/Cultural Group	Pacific War Memorial Association	Chair	Alice T. Clark
10	Claimant/Descendant			Alicia M. Fenton
10	Claimant/Descendant			Alika Luka
03	NHO/Cultural Group	Ka Waihona O Ka Na'auao PCS		Alvin Parker
10	Claimant/Descendant			Amelia K. Gora
02	Consulting Party	American Institute of Architects		Amy Blagriff
10	Claimant/Descendant			Andrew Hatchie
10	Claimant/Descendant			Angela Keaweamahi
11	Claimant/Descendant	O'ahu Island Burial Council	Waialua	Angela Leimaile Ehia-Quitevis
10	Claimant/Descendant			Angela Malo
00	Signatory	SHPD	Architectural Branch Chief	Angie R. Westfall
99	Elected Officials	Honolulu City Council	The Honorable	Ann Kobayashi
03	Individual			Anne Marie Kahunahana
02	Consulting Party	The Association of Hawaiian Civic Clubs	1st VP	Annelle Amaral
02	Consulting Party	Sovereign Council for Hawaiian Homelands Assembly		Annie Ah Hoon
02	Consulting Party	National Trust for Historic Preservation	Director	Anthea Hartig Ph.D.
02	Consulting Party	Hawai'i Community Development Authority	Executive Director	Anthony J.H. Ching
10	Claimant/Descendant			April Leimomi Keaweamahi
02	Consulting Party	Royal Order of Kamehameha		Arthur Aiu
10	Claimant/Descendant			Ashford Kekaula
10	Claimant/Descendant			Ashley I. Suzuki
02	Consulting Party	The Association of Hawaiian Civic Clubs		Association of Hawaiian Civic Clubs
03	NHO/Cultural Group	Hawaiian Historical Society		Barbara Dunn
01	Project Team	PB		Barbara Gilliland

Consultation Protocol for *Iwi Kūpuna* Discovery During the Archaeological Inventory Survey for the City Center (Construction Phase 4) of the Honolulu High-Capacity Transit Corridor Project Kalihi, Kapālama, and Honolulu Ahupua'a Honolulu District, Island of O'ahu

TMK: [1] 1-2, 1-5, 1-7, 2-1, 2-3 (Various Plats and Parcels)

Code	PA-type	Organization	Job Title	Full Name
03	NHO/Cultural Group	Hong Kong Business Association of Hawaii	Chairperson	Barinna Poon
10	Claimant/Descendant			Benjamin Del Toro
10	Claimant/Descendant			Benjamin Kanohokula III
02	Consulting Party	National Trust for Historic Preservation		Betsy Merritt
10	Claimant/Descendant			Betty Keana'aina
03	NHO/Cultural Group	Hale O Nā Ali'i		Bill Hauoli
02	Consulting Party	Royal Order of Kamehameha I Hawai'i Chapter 1	Kū'auhau	Blaine Fergerstrom
03	NHO/Cultural Group	Bishop Museum		Blair Collins
99	Elected Officials	State House	The Honorable	Blake Oshiro
00	Signatory	Advisory Council on Historic Preservation		Blythe Semmer
03	NHA/Cultural Group	Queen Liliuokalani Trust	Executive Director	Bob Ozaki
99	Elected Officials	Honolulu City Council	The Honorable	Breene Harimoto
02	Consulting Party	National Trust for Historic Preservation		Brian Turner
10	Claimant/Descendant			Bruce H. Pascua
02	Consulting Party	The Association of Hawaiian Civic Clubs	2nd VP	Bucky Leslie
00	Signatory	United States Navy		CAPT Coronado
00	Signatory	United States Navy		CAPT Kitchens
10	Claimant/Descendant			Cara Arcalas
02	Consulting Party	O'ahu Island Burial Council	Landowner/Developer KSBE	Carolyn Kehaulani Abad
10	Claimant/Descendant			Carolyn Norman
00	Signatory	United States Navy		CDR D'Andrea
02	Consulting Party	Merchant Street Hawaiian Civic Club	Hope Pelekikena	Chanel Blackwell
00	Signatory	Advisory Council on Historic Preservation		Charlene Dwin Vaughn
10	Claimant/Descendant			Charles Ahlo
03	NHO/Cultural Group	Kiole Advisory Council, Western Region Fisheries Management		Charles Kaaiai
03	NHO/Cultural Group	Kiole Advisory Council		Charles Kapua
10	Claimant/Descendant			Charles Spinney
10	Claimant/Descendant			Chase Keli'ipa'akaua
02	Consulting Party	Prince Kūhiō Hawaiian Civic Club	Pelekikena	Chasmin Sokoloski
10	Claimant/Descendant			Chelsea Abordo
10	Claimant/Descendant			Cherie Kahealani Keohokalole Battle
03	NHO/Cultural Group	Maunalua Fishpond Heritage Association		Chris Cramer
02	Consulting Party	Hawai'i Community Development Authority		Chris Sadayasu

Code	PA-type	Organization	Job Title	Full Name
00	Invited Signatory	National Park Service	Regional Director, Pacific West Region	Christine S. Lehnertz
03	NHO/Cultural Group	Chinatown Business and Community Association	President	Chu Lan Shubert-Kwock
11	Claimant/Descendant	O'ahu Island Burial Council	Landowner/Developer City of Kapolei	Chuck Ehrhorn
10	Claimant/Descendant			Clarence Medeiros Jr.
10	Claimant/Descendant			Clarence Medeiros Sr.
10	Claimant/Descendant			Clarence Moses Hukiku
99	Elected Officials	State Senate	The Honorable	Clarence Nishihara
03	NHO/Cultural Group	Oahu Council Committee for the Preservation of Historic Sites & Cultural Properties	Vice Chair	Clifford Loo
10	Claimant/Descendant			Cline Bates
02	Consulting Party	Office of Hawaiian Affairs	Administrator	Clyde Namu'o
00	Signatory	SHPD		Coochie Cayan
10	Claimant/Descendant			Corbett Roy
11	Claimant/Descendant	O'ahu Island Burial Council	Member	Cy Bridges
10	Claimant/Descendant			Cy K. Harris
10	Claimant/Descendant			Cynthia Ku
10	Claimant/Descendant			Dana Naone Hall
10	Claimant/Descendant			Daniel Del Toro
10	Claimant/Descendant			Darren Hukiku-Lopes
10	Claimant/Descendant			David Heaukulani
99	Elected Officials	State Senate	The Honorable	David Ige
00	Signatory	United States Navy		David M. Sullivan
10	Claimant/Descendant			David Medeiros
10	Claimant/Descendant			Dayleen Yokooji
10	Claimant/Descendant			Debbie Norman Kini
02	Consulting Party	Hawai'i Community Development Authority		Deepak Neupane
10	Individual			Deldrene Nohealani Herron
10	Claimant/Descendant			Dennis Ka'imina'auao Keohokalole
02	Consulting Party	Kalihi-Pālama Hawaiian Civic Club	Pelekikena	Dexter Soares
00	Signatory	Hawaii State Historic Preservation Officer		DLNR Mailbox
10	Claimant/Descendant	Nānāikapono Hawaiian Civic Club	Pelekikena	Dolly Ku-Naiwi
10	Claimant/Descendant	Nānāikapono Hawaiian Civic Club	Pelekikena	Dolly Ku-Naiwi
02	Consulting Party	Nānāikapono Hawaiian Civic Club	Pelekikena	Dolly Ku-Naiwi

Code	PA-type	Organization	Job Title	Full Name
99	Elected Officials	State Senate	The Honorable	Donna Mercado Kim
02	Consulting Party	The 'Ahahui Ka'ahumanu	Pelekikena	Donna Smythe
02	Consulting Party	University of Hawai'i Historic Preservation Certificate Program		Dr. William R. Chapman
03	NHO/Cultural Group	Pacific Justice and Reconciliation Center		Dr. Ha'aheo Guanson
10	Claimant/Descendant			Drena Julia Hai
03	NHO/Cultural Group	Royal Order of Kamehameha I, Moku 'O Kapuāiwa		Edward Akana
02	Consulting Party	Hui Mālama I Nā Kūpuna O Hawai'i		Edward Halealoha Ayau
03	NHO/Cultural Group	Hui Ho'oniho (Group Perpetuating Traditional Hawaiian Masonry Practices)		Edward Halealoha Ayau
10	Claimant/Descendant			Eileen Norman
03	NHO/Cultural Group	Sons and Daughters of Hawaiian Warriors		EiRayna Adams
00	Invited Signatory	National Park Service	Regional Director, Pacific West Region	Elaine Jackson-Retondo
00	Signatory	United States Navy		Ellyn Goldkind
03	Individual			Elmer Kaai
10	Claimant/Descendant			Emalia Keohokalole
10	Claimant/Descendant			Emma Ka'awakauo
10	Claimant/Descendant			Emma Sarono
03	NHO/Cultural Group	Cultural Learning Center of Ka'ala		Eric Enos
99	Elected Officials	Honolulu City Council	The Honorable Council Chair	Ernie Martin
01	Project Team	HNL		Faith Miyamoto
03	NHO/Cultural Group	St. Rita's Church, Nānākuli		Father Alapaki Kim
03	NHO/Cultural Group	Episcopal Diocese of Hawaii		Father Darrell Aiona
03	NHO/Cultural Group	St. Augustine's Church, Waikīkī		Father Lake Akiona
03	NHO/Cultural Group	St. Luke's, Honolulu		Father Tom Van Culin
00	Invited Signatory	National Park Service	Regional Director, Pacific West Region	Frank Hays
01	Project Team	HNL Project Team		Gary Omori
02	Consulting Party	Wai'anae Hawaiian Civic Club	Pelekikena	Gege Kawelo
03	NHO/Cultural Group	Hawaii Korean Chamber of Commerce	President	Gina Nakamura
10	Claimant/Descendant			Glenn Kealoha Kuhia
99	Elected Officials	State Senate	The Honorable	Glenn Wakai
03	NHO/Cultural Group	Nā Kū'auhau O Kahiwakaneikopolei		H. Kanoekalani Cheek
10	Individual			Ha'aheo Kanohekula
02	Consulting Party	Māmakakaua: The Daughters and Sons of Hawaiian Warriors		Hailama Farden

Code	PA-type	Organization	Job Title	Full Name
10	Claimant/Descendant			Haloa Kaleikini
10	Claimant/Descendant			Hannah K. Reeves
03	NHO/Cultural Group	Papa Ola Lōkahi	Director	Hardy Spoehr
03	NHO/Cultural Group	Papakōlea Community Development Corporation	President	Harold Johnston
02	Consulting Party	The Hale O Nā Ali'i O Hawai'i Aha Hui Po'o, Halau O Wahiika'ahu'ula Helu 'Ekahi (The Mother Chapter)	Iku Hai	Harriet Smith
10	Claimant/Descendant			Haumea Lew
99	Elected Officials	State House	The Honorable	Henry Aquino
03	NHO/Cultural Group	Hawai'i Maoli	Executive Director	Henry Gomes
03	NHO/Cultural Group	Pacific American Foundation	Executive Director	Herb Lee
10	Claimant/Descendant			Hina Kalu
02	Consulting Party	O'ahu Island Burial Council	Member	Hinaleimoana Wong Hinaleimoana Falamei
10	Claimant/Descendant			Hokunani Kanohokula
10	Claimant/Descendant			Iaukea Kawainui Keaweamahi
99	Elected Officials	Honolulu City Council	The Honorable	Ikaika Anderson
10	Claimant/Descendant			J. Nalani Gersaba
10	Claimant/Descendant			Jacob & Trina Ku, Jr.
10	Claimant/Descendant			Jacob L. Medeiros
10	Claimant/Descendant			Jacqueline Shirai
10	Claimant/Descendant			Jacquelyn Ku
10	Claimant/Descendant			Jaimison K. Medeiros
10	Claimant/Descendant			James Hoapili Keohokalole
10	Claimant/Descendant			James Hook
00	Signatory	United States Navy		Jan Takamine
10	Claimant/Descendant			Jaycine Hicks-Ku
10	Claimant/Descendant			Jayla A. Medeiros
03	NHO/Cultural Group	Kahu O Kahiko, Inc.		Jean Rason
10	Claimant/Descendant			Jeanine Leikeonaona Keohokalole
01	Project Team	HNL Project Team	Chief Public Information Officer	Jeanne Mariani-Belding
03	Individual			Jeannin Russo
00	Invited Signatory	National Park Service	Regional Director, Pacific West Region	Jeffrey Durbin
03	NHO/Cultural Group	Chinese Chamber of Commerce	President	Jeffrey Lau
02	Consulting Party	Office of Hawaiian Affairs		Jerome Yasuhara

Code	PA-type	Organization	Job Title	Full Name
02	Consulting Party	Office of Hawaiian Affairs		Jerry Norris
10	Claimant/Descendant			Jim Medeiros
10	Claimant/Descendant			Jim Medeiros, Sr.
10	Claimant/Descendant			Jim Medeiros, Sr.
10	Claimant/Descendant			Jimmy Medeiros
10	Claimant/Descendant			Joann Noa
10	Claimant/Descendant			Jodi M. Heaukulani
99	Elected Officials	State House	The Honorable	Joey Manahan
00	Signatory	United States Navy		John Camara
99	Elected Officials	State House	The Honorable	John Mizuno
00	Signatory	United States Navy		John Muraoka
02	Consulting Party	The Hale O Nā Ali'i O Hawai'i Aha Hui Po'o		Joseph Lewis
10	Claimant/Descendant			Joseph Moses Keaweaheulu Keohokalole
01	Project Team	IC		Judy Aranda
10	Claimant/Descendant			Julia Puaala Romero
10	Claimant/Descendant			Justin Keli'ipa'akaua
10	Claimant/Descendant			Ka'imi Keohokalole
10	Claimant/Descendant			Kaanohi Paulette Kaleikini
03	Claimant/Descendant			Kaanohi Paulette Kaleikini
03	NHO/Cultural Group	Kawaiahao Church	Kahu	Kahu Curtis Kekuna
03	NHO/Cultural Group	Kaumakapili Church		Kahu David Kaupu
03	NHO/Cultural Group	Bishop Memorial Chapel, Kamehameha Schools	Kahu	Kahu Kordell Kekoa
03	NHO/Cultural Group	Kupuna Church, Waimanalo		Kahu Paul Akau
03	NHO/Cultural Group	Kaumakapili Church		Kahu Richard Kamanu
03	NHO/Cultural Group	Native Hawaiian Church		Kahu Umi Sexton
03	NHO/Cultural Group	Kawaiahao Church		Kahu William Kaina
10	Claimant/Descendant			Kaimana Gaspar
10	Claimant/Descendant			Kala K. Kaleikini
10	Claimant/Descendant			Kalahikiola Keli'inoi
10	Claimant/Descendant			Kaleo Norman
01	Project Team	HNL		Kaleo Patterson
10	Claimant/Descendant			Kamaha'o Lopes

Code	PA-type	Organization	Job Title	Full Name
02	Consulting Party	Sovereign Council for Hawaiian Homelands Assembly	President	Kamaki Kanahele
10	Claimant/Descendant			Kamaya K. Fenton
03	NHO/Cultural Group	Office of Hawaiian Affairs, Research		Kamoa J. Quintevis
11	Claimant/Descendant			Kamuela Kala'i
03	NHO/Cultural Group	Ka Iwi 'Ōlelo, Royal Order of the Crown		Kanaloa Kanaina Kekino Koko
10	Claimant/Descendant			Kareen K. Medeiros
03	NHO/Cultural Group	Hawaii Heritage Center		Karen Motosue
99	Elected Officials	State House	The Honorable	Karl Rhoads
03	NHO/Cultural Group	Lomilomi Hawaii		Kauhane Lee
10	Claimant/Descendant			Ke'ala Bates
02	Consulting Party	Ali'i Pauahi Hawaiian Civic Club	Pelekikena	Keali'i T. Lum
02	Consulting Party	OHA Native Hawaiian Historic Preservation Council		Keeaumoku Kapu
11	Claimant/Descendant	O'ahu Island Burial Council	Member	Kehaulani Kruse
03	NHO/Cultural Group	Community Relations, Kamehameha Schools	Director	Kekoa Paulsen
10	Claimant/Descendant			Keli'inui Norman
10	Claimant/Descendant			Kelly McKinnis
02	Consulting Party	Office of Hawaiian Affairs	Lead Cultural Advocate	Keola Lindsey
10	Claimant/Descendant			Kepo'o Keli'ipa'akaua
02	Consulting Party	Historic Hawai'i Foundation	Executive Director	Kiersten Faulkner
10	Claimant/Descendant			Kihei Keana'aina
10	Individual			Kilinahe Keliinoe
10	Claimant/Descendant			Kimberly K. Norman Suzuki
03	NHO/Cultural Group	The Friends of 'Iolani Palace	Executive Director	Kippen de Alba Chu
10	Claimant/Descendant			Kolomona Wilson-Ku
10	Claimant/Descendant			Ku'uipo Keaweamahi
99	Elected Officials	State House	The Honorable	Kymerly Marcos Pyne
03	NHO/Cultural Group	Royal Hawaiian Academy of Traditional Arts		La'akea Suganuma
02	Consulting Party	Ahahui Siwila Hawai'i O Kapolei Hawaiian Civic Club	President	Lance C. Holden
01	Project Team	Aukahi		Lani Ma'a Lapilio
03	Individual	Ala Moana/Kaka'ako Neighborhood Board	Chair	Larry Hurst
01	Project Team	HNL Project Team	Events & Media Manager	Laura Pennington
02	Consulting Party	Hawaiian Civic Club of 'Ewa-Pu'uloa	Pelekikena	Lawrence A Woode, Jr.

Code	PA-type	Organization	Job Title	Full Name
00	Signatory	United States Navy		LCDR Jeff Thomas
10	Claimant/Descendant			Lee Anna Robinson Ku Roberts
10	Claimant/Descendant			Leilani Murphy
03	NHO/Cultural Group	Keohookalani Ranch, Kunia		Leilehua Keohookalani
10	Claimant/Descendant			Leimaile Quinteves
10	Claimant/Descendant			Leina'ala (Moses-Hukiku) Lopes
03	Individual			Leinaala Heine Kalama
10	Claimant/Descendant			Leinaala Hukiku-Lopes
10	Claimant/Descendant			Lena Estaban-Ku
03	NHO/Cultural Group	Japanese Cultural Center of Hawaii	President & Executive Director	Lenny Yajima Andrew
00	Signatory	FTA	Regional Administrator	Leslie T. Rogers
10	Claimant/Descendant			Lilinoe Keaweamahi
10	Claimant/Descendant			Lincoln K. Medeiros
10	Claimant/Descendant			Lisa Gomes Silva
10	Claimant/Descendant			Lokahi Kanohokula
10	Claimant/Descendant			Loke Mahuna
10	Claimant/Descendant			Lori Lani Keohokalole
10	Claimant/Descendant			Lorna Medeiros Takizawa
10	Claimant/Descendant			Luther Keana'aina
02	Consulting Party	Ka Lei Maile Ali'i Hawaiian Civic Club	Pelekikena	Lynette Hi'ilani Cruz
03	NHO/Cultural Group	O'ahu Council, Association of Hawaiian Civic Clubs Ko'olaupoko	President	Mahealani Cypher
10	Claimant/Descendant			Mahiaimoku Kaleikini
03	NHO/Cultural Group	American Society of Landscape Architects Hawaii Chapter		Mailbox - Hawaii ASLA
03	NHO/Cultural Group	Hawaii Plantation Village		Mailbox - Hawaii Plantation Village
03	NHO/Cultural Group	Hawaiian Railway Society		Mailbox - Hawaiian Railway Society
03	NHO/Cultural Group	Hui Kako'o 'Aina Ho'opulapula		Mailbox - Hui Kako'o Aina Ho'opulapula
03	NHO/Cultural Group	Kōkua Kalihi Valley Ho'oulu 'Aina		Mailbox - Kokua Kalihi
03	NHO/Cultural Group	Mālama Hawai'i Hui		Mailbox - Malama Hawaii Hui
03	NHO/Cultural Group	Moanalua Gardens Foundation		Mailbox - Moanalua Gardens Foundation
03	NHO/Cultural Group	The Nature Conservancy of Hawai'i		Mailbox - Nature Conservancy
03	NHO/Cultural Group	St. Augustine's Church, Waikīkī		Mailbox - St. Augustine's Church
03	NHO/Cultural Group	Vietnamese American Chamber of Commerce of Hawaii		Mailbox - Vietnamese American Chamber of Commerce

Code	PA-type	Organization	Job Title	Full Name
03	NHO/Cultural Group	World Uchinanchu Business Association		Mailbox - WUB
10	Claimant/Descendant			Maile Keaweamahi Kanohokula
10	Claimant/Descendant			Makanoe Keaweamahi
02	Consulting Party	Waikiki Hawaiian Civic Club	Pelekikena	Malia Nobrega
03	NHO/Cultural Group	Kapolei Royal Order	Kū'auhau	Mamo Knight Dwight Victor
02	Consulting Party	Hawaiian Civic Club of Honolulu	President	Manu Boyd
10	Claimant/Descendant			Manuel Kuloloio
02	Consulting Party	O'ahu Island Burial Council EWA	Chair	Mark Kawika McKeague
99	Elected Officials	State House	The Honorable	Mark Takai
02	Consulting Party	Hale O Nā Ali'i O Hawai'i, 'Ahahui Po'o, Halau O Wahīika'ahu'ula Helu 'Ekahi (The Mother Chapter)		Marlene Ebeo
10	Claimant/Descendant			Marshall Paul Ku Robinson
03	NHO/Cultural Group	Hawaii Chapter of the American Planning Association	President	Mary Alice Evans
10	Claimant/Descendant			Mary K. Kekaula
03	NHO/Cultural Group	The Outdoor Circle	CEO	Mary Steiner
01	Project Team	HNL Project Team	Marketing & Communications Manager - Public Involvement	Matthew Derby
03	Individual			McDee Philpotts
00	Invited Signatory	National Park Service	Regional Director, Pacific West Region	Melia Lane-Kamahele
00	Invited Signatory	National Park Service	Regional Director, Pacific West Region	Melia Lane-Kamahele
03	NHO/Cultural Group	The I Mua Group		Melvin Soong
03	Individual			Michael Kauhane Lee
10	Claimant/Descendant			Michael Keaweamahi Manufeki
10	Claimant/Descendant			Michael Lani Keaweamahi Jr.
10	Claimant/Descendant			Michelle I. Keana'aina
10	Claimant/Descendant			Michelle Ku-Tuiloma
99	Elected Officials	State Senate	The Honorable	Mike Gabbard
10	Claimant/Descendant			Miles Takaki
10	Individual			Moani Kaleikini
10	Claimant/Descendant			Moani Keli'inoi
10	Claimant/Descendant			Moani Soares
10	Claimant/Descendant			Moehonua Kaleikini
10	Claimant/Descendant			Moses Takaki
03	NHO/Cultural Group	Hale O Nā Ali'i O Hawai'i	Iku Hai	N. Kealoha Ballesteros

Code	PA-type	Organization	Job Title	Full Name
10	Claimant/Descendant			Nadine Grace
01	Project Team	HNL Project Team	Public Involvement Director	Nalani Dahl
10	Claimant/Descendant			Nalani Kini
10	Claimant/Descendant			Nalani Olds
10	Claimant/Descendant			Nalani Wilson-Ku
02	Consulting Party	Council for Native Hawaiian Advancement	Senior vice President	Napali Woode
10	Claimant/Descendant			Natasha Fenton
10	Claimant/Descendant			Nicole Gulia Theone
10	Claimant/Descendant			Nicole Kotrys-Ku
10	Claimant/Descendant			No'eau Kaleikini
10	Claimant/Descendant			Noelani Keana'aina
10	Claimant/Descendant			Noelani Keaweamahi
10	Claimant/Descendant			Norman Miyasato
02	Consulting Party	O'ahu Island Burial Council		Oahu Island Burial Council
02	Consulting Party	O'ahu Island Burial Council		Oahu Island Burial Council
02	Consulting Party	Māmakakaua: The Daughters and Sons of Hawaiian Warriors		Olive Souza
10	Claimant/Descendant			Olivia Hutchinson
00	Signatory	United States Navy		Pamela Takara
10	Claimant/Descendant			Paula Ku
02	Consulting Party	Office of Hawaiian Affairs	Trustee	Peter Apo
03	NHO/Cultural Group	Society for Hawaiian Archaeology	President	Peter Mills
10	Claimant/Descendant			Peyton
02	Consulting Party	American Institute of Architects		Philip White
10	Claimant/Descendant			Phoebe Gomes
02	Consulting Party	Waikīkī Hawaiian Civic Club	Hope Pelekikena	Pi'ikea Tomczyk
10	Individual			Pilipo Souza
10	Claimant/Descendant			Poohui Hukiku-Lopes
10	Claimant/Descendant			Porcia Ku Fenton
02	Consulting Party	Prince Kūhiō Hawaiian Civic Club		Prince Kūhiō Hawaiian Civic Club
02	Consulting Party	The Hale O Nā Ali'i O Hawai'i State Board of Directors	Prince	Prince Quentin Kūhiō Kawānanakoa
03	Individual		Princess	Princess Regina Abigail Mary Wahi'ika'ahu'ula Kawananakoa
00	Signatory	SHPD	Administrator	Pua Aiu

Code	PA-type	Organization	Job Title	Full Name
10	Claimant/Descendant			Puahone Kini Lopes
10	Claimant/Descendant			Pualani Guerra
03	NHO/Cultural Group	Papakōlea Community Development Corporation	Executive Director	Puni Kekauoha
10	Claimant/Descendant			Rachel Del Toro
00	Signatory	FTA		Ray Sukys
00	Signatory	United States Navy	Commander, Navy Region, Hawaii	Rear Adm. Dixon R. Smith
10	Claimant/Descendant			Regina Keana'aina
10	Claimant/Descendant			Regina Rash
03	NHO/Cultural Group	Association of Hawaiian Evangelical Churches		Rev. Charles Buck
10	Claimant/Descendant			Richard Likeke Papa, Jr.
99	Elected Officials	State House	The Honorable	Rida Cabanilla
03	Individual	Hawaiian Kingdom Law Office		Rita Kawehi Kanui Gill
02	Consulting Party	Council for Native Hawaiian Advancement	President	Robin Danner
10	Claimant/Descendant			Robin Gomes
03	NHO/Cultural Group	Council for Native Hawaiian Advancement	President & CEO	Robin Puanani Danner
10	Claimant/Descendant			Roland Medeiros
99	Elected Officials	Honolulu City Council	The Honorable	Romy Cachola
03	NHO/Cultural Group	Filipino Chamber of Commerce of Hawaii	President	Rosemarie Mendoza
99	Elected Officials	State House	The Honorable	Roy Takumi
10	Claimant/Descendant			Ruby Keana'aina McDonald
10	Claimant/Descendant			Ryan Fenton
01	Project Team	HNL		Ryan Tam
10	Claimant/Descendant			Samuel Del Toro
11	Claimant/Descendant	O'ahu Island Burial Council - Ewa	Chair, Historic Sites Committee	Shad Kane
99	Elected Officials	State House	The Honorable	Sharon Har
02	Consulting Party	King Kamehameha Hawaiian Civic Club	Pelekikena	Shelly Hao-Tamon
01	Project Team	HNL Project Team	Administrative Assistant - Public Involvement	Shenrika Glasco
03	NHO/Cultural Group	Malu'ohai Residents Association		Shirley S. Swinney
02	Consulting Party	The Association of Hawaiian Civic Clubs	President	Soulee Stroud
02	Consulting Party	American Institute of Architects	President	Spencer Leineweber
99	Elected Officials	Honolulu City Council	The Honorable	Stanley Chang
01	Project Team	PB		Stephanie Foell

Code	PA-type	Organization	Job Title	Full Name
11	Claimant/Descendant	O'ahu Island Burial Council	Member	Steve Hoag
02	Consulting Party	Princess Kai'ulani Hawaiian Civic Club	Pelekikena	Summer Keliipio
10	Individual			Susan Kanohokula
99	Elected Officials	State Senate	The Honorable	Suzanne Chun Oakland
99	Elected Officials	State House	The Honorable	Sylvia Luke
02	Consulting Party	Merchant Street Hawaiian Civic Club	Pelekikena	Tamar deFries
00	Signatory	FTA		Ted Matley
10	Claimant/Descendant			Tercia Ku
99	Elected Officials	State Senate	Hawaiian Caucus Chair	The Honorable Brickwood Galuteria
99	Elected Officials	State Senate	Senate Transportation Chair	The Honorable J. Kalani English
99	Elected Officials	State House	Transportation Committee Chair	The Honorable Joe Souki
99	Elected Officials	State House	House Finance Chair	The Honorable Marcus Oshiro
99	Elected Officials	State Senate	Senate President	The Honorable Shan Tsutsui
99	Elected Officials	State House	Speaker of the House	The Nonorable Calvin Say
10	Claimant/Descendant			Theodore Norman
10	Claimant/Descendant			Thomas T. Shirai, Jr.
99	Elected Officials	Honolulu City Council	The Honorable	Tom Berg
99	Elected Officials	State House	The Honorable	Tom Brower
03	NHO/Cultural Group	King Kamehameha V Judiciary History Center		Toni Palermo
10	Claimant/Descendant			Tracy Takaki
03	NHO/Cultural Group	Hawaii Capital Cultural Coalition		Trisha Watson
10	Claimant/Descendant			Tuahine Kaleikini
99	Elected Officials	Honolulu City Council	The Honorable	Tulsi Gabbard
99	Elected Officials	State House	The Honorable	Ty Cullen
01	Project Team	Honolulu Authority for Rapid Transportation	Board Administrator	Tyler Dos Santos-Tam
02	Consulting Party	University of Hawai'i Historic Preservation Certificate Program		UH-HPCP Mailbox
03	Individual	Kamehameha Schools	Regional Asset Manager- Natural, Cultural and Community Resources, Land Assets Division - Endowment Group	Ulalia Woodside
02	Consulting Party	Pearl Harbor Hawaiian Civic Club	President	Val Crabbe
02	Consulting Party	Hawaiian Civic Club of Wahiawā	Pelekikena	Velma Kekipi
10	Claimant/Descendant			Vicky Keana'aina
10	Claimant/Descendant			Violet L. Medeiros Mamac

Code	PA-type	Organization	Job Title	Full Name
02	Consulting Party	Māmakakaua: The Daughters and Sons of Hawaiian Warriors		Watters Martin
03	NHO/Cultural Group	Honolulu Japanese Chamber of Commerce	President	Wayne Ishihara
00	Invited Signatory	City & County of Honolulu	Director, DTS	Wayne Yoshioka
02	Consulting Party	Historic Hawai'i Foundation		Wendy Wichman
10	Claimant/Descendant			Wilfred Lopes
99	Elected Officials	State Senate	The Honorable	Will Espero
10	Claimant/Descendant			William Ha'ole
00	Signatory	Hawaii State Historic Preservation Officer	DLNR Director	William J. Aila, Jr.
03	NHO/Cultural Group	Native Hawaiian Economic Alliance		William Ornellas
03	NHO/Cultural Group	'Aha Hipu'u	Chairperson	William Souza
10	Claimant/Descendant			Wilsam Keana'aina

Appendix B HHCTCP City Center Consultation Results for Consultation Protocol

Introduction

In accordance with Stipulation III.B.4 of the project Programmatic Agreement (PA), finalized on January 18, 2011, CSH, the City and the City's representatives have pursued consultation with the O'ahu Island Burial Council (OIBC), lineal and cultural descendants, Native Hawaiian Organizations (NHOs), and other interested parties in order to prepare this consultation protocol for the treatment of any *iwi kūpuna* (burials/ human skeletal remains) identified during the archaeological inventory survey (AIS) for the HCCTCP City Center.

As specified by Stipulation III.B.4 of the PA for the preparation of the consultation protocol:

The City, in coordination with the OIBC, lineal and cultural descendants, NHOs, and other interested parties that are identified in discussion with OIBC shall complete a draft protocol for consultation regarding treatment of any *iwi kupuna* identified during the AIS. It shall be provided to the OIBC for review within six (6) months of the execution of this PA. The protocol shall address, at minimum, a process for communication about any identified *iwi kupuna*, definitions that will be applied to the Project, identification and inclusion of lineal and cultural descendants and NHOs, and workflow of actions prior to and upon identification of *iwi kupuna* during AIS. The workflow shall provide for options to avoid moving *iwi kupuna* (preservation in place) versus relocation options. Avoidance shall include relocation of columns, change of column design to or from a center alignment to straddle bent or other alternatively-supported design, modification of span length, and alternate utility locations. The City will take into account any comments provided within sixty (60) days from the OIBC, lineal and cultural descendants, NHOs and other interested parties to finalize the draft protocol. The City will proceed in accordance with the protocol once it is approved by FTA. Nothing in this protocol will supersede HRS § 6E 43.5, or HAR Chapter 13-300 [HHCTCP Programmatic Agreement 2011:11].

As part of the consultation effort, CSH, the City and the City's representatives have organized and attended numerous meetings, corresponded by email and post, and spoke over the telephone with identified interested parties. Comments and concerns received regarding the consultation protocol for *iwi kūpuna* were carefully considered throughout the development of the consultation protocol. The results of all consultation efforts to date, the submittal of the final consultation protocol (September 18, 2011), are provided below. Consultation shall remain, however, an ongoing process for the duration of the project.

O'ahu Island Burial Council

In accordance with the project PA, CSH and City representatives attended several meetings with the OIBC in order to discuss the development of the draft consultation protocol for *iwi kūpuna* and to obtain OIBC input regarding the protocol.

On Wednesday, April 13, 2011, CSH and the City met with the OIBC Transit Task Force to discuss the City Center AISP and the draft consultation protocol. Due to time constraints discussion of the consultation protocol was postponed, however, to a later meeting. Subsequently, on Wednesday, May 4, 2011, CSH and the City met with the OIBC Transit Task Force specifically in order to discuss the consultation protocol. During the discussion, several items were brought up regarding the consultation protocol and Stipulation III.B.4, including:

- 1) The Project's definition of *iwi kūpuna*
- 2) Whether disarticulated human skeletal remains not in a burial context are to be considered burial sites under State burial law. To date, there has been no clear consensus on this issue. The decision on how to define disarticulated human remains will affect the amount of protocol communications and the treatment protocol in these instances. OIBC indicated that the "gray area" human skeletal remains should be weighted toward being treated as burial sites if there is not reasonable evidence to treat them as isolated remains not in a burial context.
- 3) The notification process and measures to quickly disseminate information regarding *iwi kūpuna* finds during the AIS
- 4) The recognition process for lineal and cultural descendants
- 5) The "workflow" between the discovery of *iwi kūpuna* and the implementation of burial treatment decisions. OIBC indicated that the protocol should include a flow chart of different scenarios.
- 6) The need to have appropriate potential burial relocation areas.

On Wednesday, June 8, 2011, CSH and the City attended the OIBC June meeting as Agenda item V.D. in order to provide an update on all construction phases of the HHCTCP. Matt McDermott of CSH provided a summary of the status of Phases 1-4 followed by a summary of the development of a consultation protocol for *iwi kūpuna* and its component parts. Mr. Kaleo Patterson of the City also briefly described the consultation venues being pursued by the City, including; outreach to 'ohana along the project route, collaboration with Kamehameha Schools which is currently involved in projects within the vicinity of the HHCTCP City Center, and meetings with labor union members (many of whom are Native Hawaiians) in order to seek remembrances of burial finds in the 1960s-1970s and how they were treated. The majority of the resulting discussion referred to general consultation ideas, rather than specific discussion regarding consultation protocol for *iwi kūpuna*.

On Wednesday, July 13, 2011, Matt McDermott of CSH and Faith Miyamoto of the City attended the OIBC July general meeting. Mr. McDermott provided HHCTCP project updates for

Construction Phases 1-4 as well as the consultation protocol. Specific discussion of the consultation protocol did not occur at this time. However, on Tuesday, August 16, 2011, Matt McDermott and Ena Sroat of CSH along with Faith Miyamoto of the City met with the OIBC Transit Task Force in order to review and discuss the draft consultation protocol for *iwi kūpuna* which had been submitted to the OIBC on July 19, 2011. OIBC Transit Task Force members consisted of Kehau Abad, Shad Kane, and Kawika McKeague. At the outset of the meeting Mr. McDermott reviewed the process and timeline for the drafting of the protocol and described the ongoing consultation efforts of CSH and the City. Mr. McDermott also noted the strong efforts by CSH to incorporate concerns expressed by the OIBC and Transit Task Force during prior discussions as well as concerns expressed by other NHOs and individuals, notably the concern that the protocol should also address any “inadvertent discoveries” made during actual project construction.

The OIBC Transit Task Force sought clarification of aspects of the protocol as well as suggested some revisions, including:

- 1) The need to specify that the OIBC Kona representative will be notified for all “grey area” *iwi* and burial site finds
- 2) The need to add a statement within the protocol clarifying that should the need for the curation of *iwi kūpuna* arise the process will be expedited as quickly as possible, thus avoiding setting a precedent for holding *iwi* in limbo for long periods of time
- 3) The need for a password to enter the project consultation notification website
- 4) The need to include a *kahea* (notification or call) when *iwi kūpuna* are found so that those interested will be able to participate in offering a *pule* or to interact in some way with the *kupuna* to let them know what is happening
- 5) The need to articulate a “hierarchy” of consultation; i.e that those with lineal ties to the *ahupua‘a* in which there is *iwi kūpuna* finds have more say in treatment determination than those without specific ties to the *ahupua‘a*
- 6) The suggestion to add a visual “workflow” chart

On September 14, 2011, Matt McDermott of CSH and Kaleo Patterson of the City attended the OIBC general meeting in order to further discuss the draft Consultation Protocol and ongoing consultation efforts. Mr. McDermott summarized the protocol timeline as stipulated by the project PA, the consultation effort to date, and the recent revisions to the protocol, including those revisions requested by the OIBC Transit Task Force (see above). Other revisions included the deletion of a website password to access *iwi kūpuna* information (due to inherent insecurity issues), instead opting for standard notification information and the option to contact the City for more specific information, and the timeline for the consultation notification process to begin after the initial consultation with SHPD. Mr. McDermott discussed the draft protocol’s distinction between burial sites and discoveries of human skeletal remains from a non-burial context, and related how the distinction would be made between the two. Mr. McDermott related the different notification procedures that would be enacted for burials and discoveries of human skeletal remains from a non-burial context. Mr. McDermott also emphasized that the protocol

will continue to be refined as needed throughout the City Center AIS and subsequent construction phase. Mr. Patterson further described the City's consultation efforts, including attendance of the Council for Native Hawaiian Advancement Convention in August and meetings with the Sovereign Council for Hawaiian Homelands Assembly, Civic Clubs, and laborers' unions.

State Historic Preservation Division/Department of Land & Natural Resources (SHPD/DLNR)

On Monday, March 14, 2011, CSH, the City, and PB, met with SHPD/DLNR staff to discuss the draft City Center AISP and the associated consultation effort. Discussion of the draft AISP included the procedures governing burial finds and the treatment of disarticulated human skeletal remains. In the case of burial finds, the SHPD/DLNR indicated that treatment should be decided on a case by case basis, particularly since public safety concerns would play a large role in the decision. Regarding the treatment of disarticulated human skeletal remains from a non-burial context, SHPD/DLNR staff indicated that they should not be considered a burial per Hawai'i State Burial law. The SHPD indicated that the Attorney General office had provided SHPD with guidance supporting this interpretation, but added that this issue would likely need legal resolution.

On August 16, 2011, Matt McDermott of CSH e-mailed a PDF copy of the draft consultation protocol to Phyllis Cayan of SHPD requesting SHPD comment. Additionally, a hard copy of the draft protocol was hand-delivered on August 16th to the SHPD offices in Kapolei.

Also on August 16, 2011, following a request received at the August 12th community consultation meeting (see Section 1.9.6.1), CSH sent an e-mail to Phyllis Cayan of SHPD requesting the most up-to-date SHPD recognized descendents list. The e-mail provided an attachment of a 2010 SHPD list (obtained by Lani Lapilio of the cultural consulting firm Aukahi, Inc.) with a request to verify that this was the most up-dated list. To date, no reply has been received.

On September 7, 2011, SHPD drafted a response letter to CSH addressing the draft consultation protocol (LOG NO: 2011.2268, DOC NO: 1109pc0001). SHPD expressed the belief that the protocol represents a positive step toward building consultation and provides interested parties with a useful reference regarding state burial laws. SHPD recommended that continuing outreach include "informational/educational sessions and/or handouts on **the process** for any iwi kupuna discovered during the AIS", including summarization of state laws and jurisdiction clarification.

On September 20, 2011, representatives of CSH and PB met with Ms. Deona Naboa, the O'ahu Island Archaeologist for the SHPD, to discuss the contents of the September 8, 2011 OHA consultation letter addressed to the FTA (see discussion below). CSH provided Ms. Naboa with a copy of the letter and explained the need for written clarification by the SHPD of the department's position regarding the designation of disarticulated human skeletal remains not from a burial site context: whether SHPD shall not consider such finds a burial site under Hawai'i state law as indicated in previous consultation (see above). CSH explained that such *iwi*

kūpuna finds in the past had been treated both ways, both as a burial and as human skeletal remains from a non-burial context. Ms. Naboa agreed on the need to convene a meeting between herself, Ms. Pua Aiu, and Ms. Phyllis Cayan of the SHPD in order to discuss the issue and to generate a written statement clarifying the position of the SHPD.

On September 27, 2011, Matt McDermott of CSH sent a follow-up e-mail to Ms. Phyllis Cayan, History & Culture Branch Chief of the SHPD, summarizing the issue and requesting a policy statement from the SHPD if possible. A response e-mail from Ms. Pua Aiu, SHPD Administrator, was received the same day stating the SHPD would follow Hawaii state burial laws 6E-43 and HAR 13-300 and that the treatment of any disarticulated skeletal remains found in a non-burial context will be decided on a case-by-case basis. Regarding the interpretation of a “burial site”, the SHPD stated that the issue would be addressed internally, however that this would take time.

Office of Hawaiian Affairs (OHA)

As part of the consultation protocol development effort, CSH and the City met with OHA over the course of April and May, 2011 in order to obtain comments and suggestions regarding the consultation protocol (as well as to discuss the draft City Center AISP). The April 1, 2011 meeting was attended by CSH (Matt McDermott and David Shideler), the City (Dr. Kaleo Patterson), Aukahi (Lani Ma'a Lapilio), and Keola Lindsey and Jerry Norris from OHA. During discussion of the draft consultation protocol, the OHA put forth several suggestions and comments, including:

- 1) That the City may be able to provide potential reinterment sites with less difficulty than private landowners or the state, and that OHA anticipates continuing participation in this decision process
- 2) That a timely method for the dissemination of information be implemented for finds of animal bones as well as for human skeletal remains, in order to curtail the spread of misinformation
- 3) That the protocol should outline the procedures for the immediate short-term treatment of AIS finds of *iwi kūpuna*, prior to formal burial treatment decisions after the AIS as part of the burial treatment process
- 4) That all CSH archaeological staff and construction crew support involved in the project be trained in cultural sensitivity and cultural protocols at burial locations
- 5) The need to clearly establish whether or not disarticulated human skeletal remains outside a burial context are considered a “burial site” under Hawai'i state burial law, and that this issue needs to be resolved before AIS work begins
- 6) That the notification of *iwi kūpuna* discoveries be inclusive of all concerned parties, that information be disseminated in a timely manner, through a technological means such as the internet, as well as more conventional means, and that the party responsible for the notifications have the resources to implement the notification promptly. The SHPD is understaffed and not the appropriate entity

7) That continued consultation with the OIBC and OHA was very important

Subsequent to the April 1, 2011 meeting, OHA posted a letter to the FTA, dated May 5, 2011, in which it was stated that the meeting minute notes supplied by CSH to OHA accurately reflected the discussions, were provided in a timely manner, and incorporated all requested revisions.

On Tuesday, May 31, 2011, CSH and the City attended OHA’s Native Hawaiian Historic Preservation Council (NHHPC) meeting in order to present the draft City Center AISP and to seek input regarding the development of the consultation protocol for *iwi kūpuna*. Issues specifically regarding the consultation protocol included:

- 1) The means for identifying descendants
- 2) Concern that the treatment determination for previously identified burials be expedited faster than the 45 day maximum defined by HAR 13-300-33(f)
- 3) The importance of determining treatment protocol (how to prepare the *kapa*, basket, etc.)
- 4) Expressed opposition to the relocation of *iwi kūpuna*
- 5) The Hawaiian perspective of burial sites and ancestral spirits as a permanent “resting place” that the *iwi* is deeply connected to
- 6) The treatment of artifacts

On August 15, 2011, Matt McDermott of CSH e-mailed a PDF copy of the Draft Consultation Protocol for *Iwi Kūpuna* to Keola Lindsey for OHA review. Mr. McDermott offered to meet with Mr. Lindsey and/or the NHHCP to discuss any questions or concerns regarding the draft protocol.

On September 15, 2011, CSH received a copy of the letter sent by OHA to the FTA, dated September 8, 2011, in which OHA detailed a response to the Draft Consultation Protocol for *Iwi Kūpuna* (see Appendix C). In the letter OHA supported the decision to expand the scope of the protocol to include all *iwi kūpuna* finds throughout the duration of project work for Phase 4, both during the AIS and during subsequent construction activity. OHA further supported the efforts to create a comprehensive consultation contact list that would be “inclusive” of all interested parties, contain an “opt-in” process, and ascertain the preferred method of communication for each individual or party. OHA also raised strong concerns regarding the draft protocol, including:

- 1) The definition and treatment during the AIS of “disarticulated human skeletal remains not in a burial context”. In response to Section 3.2.1 [of an earlier draft of this protocol] in which it is stated that the SHPD “has expressed the interpretation that disarticulated human skeletal remains not from a burial site context are not considered a burial under Hawai‘i state burial law” (see also discussion above) OHA requested a written statement by the SHPD clarifying that this is indeed the department’s position. OHA stressed that the determination taken during this project could set a precedent for

all future work throughout the State of Hawai'i. OHA advocated that all *iwi kūpuna* finds during the AIS be determined as “previously identified” and under the jurisdiction of the OIBC.

- 2) That all *iwi kūpuna* finds made during construction activity subsequent to the AIS, regardless of context, be identified as an “inadvertent discovery”, as required by Hawai'i state burial law.
- 3) Whether the Nahinu family had been consulted about the potential use of their family re-interment site at the Kalihi-Pālana Bus Facility.
- 4) Request for clarification that while OHA previously recommended that re-interment sites be proactively identified, that this recommendation does not reflect any support for re-interment but rather the desire to reduce the holding time for any *iwi kūpuna* being held in temporary curation.

Royal Order of Kamehameha I Moku O Kapuaiwa (Leeward Coast), Hawaiian Kahu: of the United Churches of Christ, the Episcopal Diocese of Hawai'i, and Kamehameha Schools Bishop Memorial Chapel. Kahu O Kahiko Inc., and Māmakakaua: (Daughters and Sons of Hawaiian Warriors)

As part of the attempt to expand consultation efforts for the AISP City Center and the consultation protocol through small group venues, a meeting was held on March 31, 2011 with Kaleo Patterson of the City, members of the Royal Order of Kamehameha I Moku O Kapuaiwa (Leeward Coast), Kahu O Kahiko Inc., Māmakakaua (Daughters and Sons of Hawaiian Warriors), and several Hawaiian *Kahu* (Reverends) from the United Churches of Christ, the Episcopal Church of Hawai'i, and the Kamehameha Schools Bishop Memorial Chapel. Following a slide presentation of the draft City Center AISP by David Shideler and Matt McDermott of CSH, discussions ensued regarding consultation protocol for *iwi kūpuna*, reinterment locations, and cultural monitoring. Comments and suggestions included:

- 1) That cultural descendants should decide how to take care of burial finds, including the selection of reinterment sites
- 2) That a combination of traditional and Christian burial practices have been used in the past (e.g., the Queen Street burial ceremony), in which remains were wrapped in black *kapa* but buried in accordance with Christian practices
- 3) That many families of windward O'ahu still practice sea burials along with Christian practices
- 4) That burial practices are different and there is “no one size fits all.” We cannot be presumptuous if we do not know and it is not our choice as it is the *kuleana* of the *Kahu*

- 5) That reinterment sites should be visible as a way of honoring the *kūpuna* and keeping knowledge of the burials alive for the future
- 6) That the reinterment sites need to be identified proactively
- 7) That cultural monitors should be used on the project
- 8) That Hawaiians were progressive thinkers and they would move forward rather than stop progress

The Royal Order of the Crown o Hawai‘i and Kahu o Kahiko, Inc.

During a May 10, 2011 meeting with Matt McDermott of CSH, Kaleo Patterson of the City, Kanaloa Koko of the Royal Order of the Crown o Hawai‘i, and Jean Rasor of Kahu o Kahiko, Inc., regarding the draft City Center AISP, discussion also touched upon concerns about the consultation protocol. Comments, concerns, and suggestions made by Kanaloa Koko and Jean Rasor pertaining to the development of a consultation protocol included:

- 1) The movement of columns if burials are found
- 2) That how lineal and cultural descendants feel regarding *iwi kūpuna* must be evaluated
- 3) The need for appropriate cultural protocols for the project
- 4) The need for a consultation protocol
- 5) The need for more communication

Kamehameha Schools

On Tuesday May 24, 2011 CSH, PB Americas, the City, and Kauwahi Planning LLC met with Kamehameha Schools (KS) representatives at the boardroom of Ali‘i Place, Honolulu in order to obtain comments and suggestions from Kamehameha Schools regarding the development of a consultation process for *iwi kūpuna* as well as insight into Kamehameha School’s experiences as a land developer faced with similar issues. Discussion areas included:

- 1) Kamehameha Schools’ approach to the consultation process for the ongoing KS Kaka‘ako development project
- 2) How to deal with a lack of consensus regarding treatment of *iwi kūpuna*
- 3) How to put a protocol in writing that gives a clear plan of action and yet respects the differences in opinions and beliefs
- 4) KS’s expectations for the upcoming HHCTCP work
- 5) How to deal with any HHCTCP finds on KS lands

Constructive comments and advice from Kamehameha Schools representatives included:

- 1) The high importance of communicating information consistently, thus engendering constant dialogue and building trust

- 2) That consensus regarding the treatment of *iwi kūpuna* is not possible given the wide differences. Trying to force a middle ground agreement is not a helpful approach
- 3) The need to approach as a case by case scenario, and not as a set policy
- 4) That KS's approach includes being proactive, reaching out to all parties and view points and embracing diversity with respect, and taking the time to build trust
- 5) The need to be flexible: never to say "this is a done deal" so that parties do not feel disrespected
- 6) The importance of clarifying an understanding of roles: i.e. the *actual* powers and limitations of entities (such as CSH, SHPD, OIBC, etc.) versus what many people might *expect* of these entities
- 7) That views will vary from 'ohana to 'ohana, and also between regions of an island
- 8) Suggested that PB/CSH/the City look at previous projects in order to proactively identify the issues and whether and how they were resolved

Carpenters' Union, Hale O Nā Ali'i, Hawai'i Laborers' Union, Hawaii LECET, Local 126, and Van and Kathryn Diamond

On May 18, 2011 at Ali'i Place, CSH, PB, the City, and Aukahi LLC met with members of the Carpenters' Union, Hawai'i Laborers' Union, Hale O Nā Ali'i, Hawaii LECET, Local 126, and Van and Kathryn Diamond. Matt McDermott of CSH and Kaleo Patterson of the City presented a summary of the HHCTCP and the AISP, project work already completed, and future project plans. An explanation of the Programmatic Agreement and the focus on the City Center area was provided. The ensuing discussion raised several issues regarding the treatment of burial finds, including:

- 1) That not only Hawaiians may be affected by burial finds, but also other ethnic groups such as Chinese or Japanese, with a need to also be respected
- 2) The need for an appropriate and safe curation area for any finds
- 3) The need for accurate records for any relocation of burial finds
- 4) That protocol should be by areas rather than one protocol covering all
- 5) That a vocal minority should not be construed as the majority

Lineal and Cultural Descendants Consultation

In accordance with Stipulation III.B.4 of the PA, the City and CSH also sought input regarding the consultation protocol from lineal and cultural descendants. Face to face meetings as well as extended correspondence and telephone communications took place as part of the consultation process.

Ms. Deldrene (Dee Dee) Nohealani Herron

On April 25, 2011, Matt McDermott of CSH, Kaleo Patterson of the City, met with Ms. Deldrene (Dee Dee) Nohealani Herron, a potential cultural descendent of the Kaka'ako area. The meeting was held at Ali'i Place. Following discussion of Ms. Herron's genealogical connections with the areas of the project's Construction Phases 1 and 4, the meeting focused on the treatment and reinterment of burial finds, with which Ms. Herron has had experience during a Punalu'u, O'ahu waterline project, and on the desirability of an ethnographic study for the City Center corridor. Suggestions and requests put forth by Ms. Herron specifically regarding the consultation protocol included:

- 1) That she preferred the use of *kapa* cloth for wrapping burials for reinterment rather than cotton muslin
- 2) That burials would be best left in place, if possible, even if that required that they be preserved under roadways. Under certain circumstances, she indicated that relocation to a safer area immediately adjacent to the original burial would be appropriate
- 3) That she would be willing to help with the care of any previously identified burials that may be found
- 4) That any information dissemination about AIS burial finds should include any applicable LCA numbers and the TMK information. She stated that she would like to be included in the notification lists for the City Center burial consultation protocol

Ms. Kilinahe Keli'inoe

On April 27, 2011, a letter was received from Ms. Kilinahe Keli'inoe, a state-recognized cultural descendent of the Kaka'ako area. The letter outlined her beliefs and those of her grandmother, Ms. P. Ka'anohi Kaleikini, regarding the treatment of any and all *iwi kūpuna* found in the Phase 4 area of the project. Comments and requests put forth by Ms. Keli'inoe included:

- 1) That any and all *iwi kūpuna* identified during the AIS be regarded as previously identified burials, which fall under the jurisdiction of the OIBC
- 2) That the SHPD does not have exclusive authority to remove any *iwi kūpuna* from any burial site within the AIS area without first notifying the entire OIBC
- 3) That no *iwi kūpuna* shall be removed from the site without notification from the OIBC or the SHPD
- 4) That her belief and desire is to preserve in place any and all *iwi kūpuna* identified during the City Center AIS
- 5) That she requests to be notified when testing begins and ends in Phase 4 of the project and is kept abreast of test sites, including the number and locations of test sites
- 6) That preservation treatment and protocol be in effect prior to and during construction activities, in order to protect the burial sites in the area

- 7) That a briefing on the history of the area and burial site protection protocol for construction supervisors and crews be provided prior to any and all ground-disturbing activities in the Phase 4 area
- 8) That an archaeological monitor and a cultural monitor be present on-site during all ground-disturbing activities. She suggests that her grandmother, Ms. P. Ka'anohi Kaleikini, be the cultural monitor
- 9) That both the archaeological monitor and cultural monitor have the authority to stop work in the vicinity of any findings immediately, so that documentation can proceed and appropriate treatment can be determined;
- 10) That the cultural monitor be allowed to preside over private cultural services with the *iwi kūpuna* prior to their being covered
- 11) That adequate buffers are placed around any burial sites
- 12) That in the event of inadvertent burial discoveries, HRD 6E 43.6 will be followed. Also that a cultural monitor be on hand to administer cultural protocol until a determination is made regarding the inadvertent burial discoveries
- 13) That removal of any remains shall be determined in consultation with the SHPD/DLNR, the OIBC, recognized cultural and lineal descendants, the OHA, and Hui Malama I Na Kupuna o Hawai'i Nei, and shall be overseen by a qualified archaeologist and a mitigation plan shall be prepared
- 14) That if any *iwi kūpuna* are to be relocated, the cultural monitor, along with any descendants called to assist, will take the *iwi kūpuna* to the closest enclosed trailer or office and wrap the *iwi kūpuna* in kapa and place the wrapped *iwi kūpuna* in *hina* 'i, then tie with *kaula*. The *puolo* will then be placed in an air conditioned curation trailer used exclusively for *iwi kūpuna*, until final reinterment. The material required for wrapping *iwi kūpuna* (*kapa*, *hina* 'i, and *kaula*) should be gathered before the AIS begins in the Phase 4 area
- 15) That reinterment should take place sooner rather than later
- 16) That burial site locations and landscaping designs should be presented to cultural descendants as soon as possible for commenting
- 17) That any and all *moepu* (burial items) found on or in close proximity to any and all *iwi kūpuna* or burial site be placed within the *puolo* with the *iwi kūpuna* or wrapped separately and reburied alongside the *puolo iwi*. Also, no *moepu* should be kept by any city or state entity or CSH

Ms. P. Ka'anohi Kaleikini

On April 27, 2011, an e-mail was received from Ms. P. Ka'anohi Kaleikini, a state-recognized cultural descendent of the Kaka'ako area. In the e-mail, Ms. Kaleikini commented on the project PA, specifically regarding AISP preparation and the consultation protocol for *iwi kūpuna*. Her comments and requests regarding the consultation protocol included:

- 1) That the consultation process for the preparation of a burial treatment plan is too short, and the timeline should be extended
- 2) That she and others be provided with a physical address to which input regarding burial treatment protocol can be sent. Responses to these letters should be received within 30 days. Additionally, all comments and responses should be included in the final AISP

A total of 29 letters were received from Kaleikini and extended 'ohana (family). These letters voiced similar concerns regarding the AISP and consultation protocol.

Ms. Kaleikini also attended the August 12, 2011 community meeting (see below) as well as the September OIBC general meeting. At the OIBC meeting Ms. Kaleikini expressed the desire that the relocation of any *iwi kūpuna* be kept as close as possible to the original location, that cultural monitors be utilized, and that descendents have more say in the treatment of *iwi kūpuna* than any other interested party or individual. She also questioned whether the City had a curation process in place and that she would like to see that specified in the AISP.

In response to the Draft Consultation Protocol for *Iwi Kūpuna* Ms. Kaleikini posted three e-mails to Matt McDermott of CSH expressing her concerns. Suggestions and concerns included:

- 1) That potential relocation sites should be used for inadvertent discoveries rather than previously identified finds, as descendents will push for preservation in place during the AIS.
- 2) Consultation for potential relocation sites should have included descendents and consulting parties, including: a Native Hawaiian *kahu*, the Order of Kamehameha, OHA, and the OIBC.
- 3) That any relocation sites be as close to the original burial location as possible and within the same *ahupu* 'a
- 4) That the City Parks option is the best for relocation sites as: 1. They are accessible and it is the City's *kuleana*; 2. The Transit Stations will not be available for prompt re-interment; and 3. The existing sites are either full or would not be available for immediate re-interment.
- 5) That all members of her 'ohana be listed on the Consulting Contact List as "Claimant/Descendent" rather than "Individual"
- 6) Regarding the combined use of both traditional and Christian burial practices (see pg. B7 above), that as any *iwi kūpuna* found will be ancient, that traditional protocols precede any Christian practices.
- 7) Regarding LCA 6450:1: 1. Request that as state recognized direct lineal descendents of this LCA, that her 'ohana be present as cultural monitors during all excavation in this area; 2. That any *iwi kūpuna* or *moepu* found in this area be handled exclusively by her 'ohana; and 3. That any re-interment for inadvertent finds be relocated as quickly as possible and as close as possible to the original burial site. To this end, a re-interment site should be identified as soon as possible.

Mr. Michael Kumukauoha Lee

At the May 31, 2011 meeting between CSH and the NHHPC (OHA), CSH also received several comments regarding the consultation protocol from public individuals attending the meeting. Mr. Michael Lee, a state-recognized cultural descendent of the Chinatown area who has been an active participant in discussions with CSH and the City regarding the AISP, expressed concern regarding the treatment of any funerary objects found during the project. Mr. Lee stressed the importance of all funerary objects, such as *ki‘i* (images), as an integral part of the burial that should remain with the skeletal remains of any burials. He stated that his ancestors were known to have been buried with *ki‘i* in the Chinatown area.

In a follow-up email sent by Mr. Lee to Matt McDermott of CSH on May 31, 2011, Mr. Lee again mentioned the issue of *ki‘i*. He requested to be informed of CSH policy, in the context of the federal Native American Graves Protection and Repatriation Act (NAGPRA) legislation, of the treatment of *ki‘i*. Mr. McDermott responded via email on June 7, 2011 that CSH shall strictly follow the applicable Hawai‘i State burial law. Accordingly, human skeletal remains and associated burial goods will not be moved without SHPD approval. Any findings, including funerary objects, will require a burial treatment plan delineating the treatment decision. He clarified that in this case NAGPRA legislation would not apply, even though the project is federally funded, as the lands surrounding the Chinatown Station are currently privately-owned and are not federally-controlled.

On July 28, 2011, Mr. Lee met with CSH, PB, and City representatives in order to discuss AIS City Center and its potential effects on his ancestral lands within LCA 170. Mr. Lee produced documentation regarding the existence of at least one ancestral burial within the property, which he believed to also include significant burial items such as *ki‘i*. During discussions Mr. Lee indicated that he would potentially be amenable to relocation of any *iwi kūpuna* encountered during excavations as long as the relocation remained within LCA 170. At a subsequent September 15th community meeting Mr. Lee retracted this statement and expressed strong opposition to any relocation of *iwi kūpuna* found within LCA 170.

Individuals

During the May 31, 2011 NHHPC (OHA) meeting, public testimony regarding the various agenda items and issues was received from several individuals, including Ms. U‘ilani Kapu. Ms. Kapu expressed concern for the treatment of any *iwi* encountered during the AIS, specifically that the AIS should not be exempt from current Hawai‘i state burial laws and that the *iwi* should not be moved quickly. Matt McDermott of CSH explained that any burial discoveries made during the AIS would be defined as “previously identified” and would require a burial treatment plan prior to any treatment decisions. He clarified that any human skeletal remains encountered during the construction phase of the project (not during the AIS) would be considered “inadvertent discoveries”, for which the SHPD would need to make a burial treatment decision within two days; however, the treatment decision would not equate to immediate action within two days.

Small Group Community Meetings

August 12, 2011

On Thursday, August 12, 2011, Matt McDermott and Ena Sroat of CSH, Faith Miyamoto of the City, and Lani Lapilio of Aukahi Inc. met with a small group of community members in order to address questions and concerns regarding the AISP City Center and the consultation protocol. Community members present included: Kaleo Paik, Ka'anohi Kaleikini, Kamuela Kala'i, Pono Kealoha, George Kahumoku Flores, and three university students; Brandi Hyden, Taryn Pacewicz, and Z. Aki. While a large portion of the meeting focused on questions and concerns related to the AISP City Center, community members also expressed several concerns regarding the treatment of *iwi kūpuna* and the consultation list, including:

- 1) A concern that the SHPD descendents list has not been updated in some time. Requested that the project consultation list include those that are not on the recognized SHPD list.
- 2) The *kupuna* chose to be buried in a particular place for important reasons.
- 3) The need for broad community dialogue that would include such people as the *tutu kupuna* who cannot leave their homes and individuals who do not attend OIBC meetings. Suggested such groups as *halau* (hula schools) and students.

Reiterated and emphasized the desire for a strong cultural monitoring program.

August 26, 2011

On Friday, August 26, 2011, Mr. Kaleo Patterson of the City organized a small-group community consultation meeting at Ali'i Place. Attendees included Matt McDermott and Ena Sroat of Cultural Surveys, Kim Evans of Kauwahi Planning LLC, Rocky Naeole of the Royal Order of Kamehameha I (Moku 'O Kapuāiwa), Kaleo Paik, Kahu Manu Mook, Manu Mook Jr., and Jean Rasor. At the outset of the meeting it was determined that the primary concern of the community members at this meeting centered on the consultation protocol and the treatment of *iwi kūpuna*, but that it would also be helpful to hear a summary of the AISP City Center. Mr. McDermott, therefore, presented a PowerPoint overview of the AISP City Center followed by some discussion. Discussion of the consultation protocol focused on the role of SHPD, the need to pursue the broadest consultation outreach possible, and the need to proactively designate for each *ahupua'a* those who will provide the cultural ceremony and protocol for *iwi kūpuna* finds. Discussion of these concerns included:

- 1) Strong concern about the power of SHPD to make decisions regarding the treatment of "inadvertent discoveries". It was felt that SHPD did not effectively seek out affected families or a wide array of NHOs, thereby cutting out important parties in the treatment decision process.
- 2) The need to make sure that SHPD clearly appreciates the importance of consulting parties' views and wants.
- 3) Suggestion that the City & County urge the legislature to amend the current laws so as to give the consulting process more weight.

- 4) The need for the in-house transit outreach team to be very proactive in seeking out a wide variety of NHOs and individuals.
- 5) That it should also be Hawaiians' *kuleana* to proactively gather *mana* 'o from families and *kupuna*.
- 6) The importance of contacting and gathering Hawaiian families and individuals connected to each *ahupua* 'a (through which the HHCTCP City Center will cross) in order to determine a representative(s) who will accept the *kuleana* of interacting with the *iwi kūpuna* and providing the necessary cultural ceremonies.
- 7) The importance of the place of burial for the *iwi*; it is part of their *mana*. Treatment decisions need to be based on traditional, not modern, perspectives. Thus it is important for the families to make the decision.

September 15, 2011

On Thursday, September 15, 2011, Matt McDermott and Ena Sroat of CSH and Kaleo Patterson of the City met with several concerned community members to discuss, among other issues, the treatment of *iwi kūpuna* encountered during the HHCTCP City Center. Community members attending included Michael Kumukauoha Lee, Glenn AhNee, Francis Core, Barney Isaacs, and Ha'ahea Guanson. Suggestions and concerns expressed during the meeting included:

- 1) The need for the selection of specific caretakers, or *kahu*, who would care for the spiritual aspects of the *iwi kūpuna*, or their well-being. The selection of *kahu* is part of Hawaiian cultural practice and alleviates strife by centering decision-making for burial treatment. The selection of *kahu* should be those that *'ike papa lua*, or walk the two worlds, and thus have a direct understanding of the spiritual realm.
- 2) Regarding the discovery of *iwi kūpuna* within a non-burial context: that any bone or bone fragment should be considered a burial and treated as such. The fragment may be all that is left of the *iwi kūpuna* and contains the spiritual essence of that person.
- 3) That Hawaiian families' ties or interests cannot be restricted to just one *ahupua* 'a or discrete geographic area, since families could be widespread and connected to several areas.
- 4) That all *iwi kūpuna* discoveries should be treated with the respect due to *ali* 'i. That *koa* boxes and *kapa* wrap be utilized during protocol treatment.
- 5) That placing different *iwi kūpuna* finds together in one common relocation area, for example a station footprint, could be very destructive for the spirits or their descendents if these ancestors were not compatible during their lifetimes or family history.

Table 1. Issues and Requests Raised Regarding the Burial Consultation Protocol

Agency/Group/Individual	Issue/Request
OIBC	That burial treatment decisions should be informed by the historical/cultural context
OIBC	That “grey area” human skeletal remains finds should be weighted toward being treated as a burial. That the OIBC Kona representative be notified of all “grey area” finds as well as clear-cut burials
OIBC	The need to have appropriate potential burial relocation areas
OIBC	That the notification process quickly disseminate information regarding <i>iwi kūpuna</i> finds
OIBC	That the treatment of any curated <i>iwi kūpuna</i> should be expedited as quickly as possible
OIBC	The need to include a <i>kahea</i> (call) when <i>iwi kūpuna</i> are found so that those interested can participate in any <i>pule</i> or interactions with the <i>kupuna</i>
OIBC	The need to articulate a “hierarchy” of consultation: those with lineal ties to an area should have more consultation weight than those without lineal ties
OHA	That a timely method for the dissemination of information be implemented for finds of faunal bones, as well as for human remains, in order to curtail the spread of misinformation
OHA	That it be made clear when the required notifications will occur if a burial is identified in the early morning hours
OHA	That CSH archaeological staff and construction crew support involved in the project be trained in cultural sensitivity and cultural protocols at burial locations
OHA	That the notification of burial discoveries be inclusive of all concerned parties
OHA	That information be disseminated in a timely manner, through technological means such as the internet, as well as through traditional means such as mail and phone
OHA	That the party responsible for the notifications have the resources to implement the notification promptly

Agency/Group/Individual	Issue/Request
OHA	That potential re-interment sites be pro-actively discussed (as a mitigation measure to expedite any curation of <i>iwi kūpuna</i>)
OHA	The need to clearly establish whether or not disarticulated human skeletal remains outside a burial context (during the AIS) are considered a “burial site” under Hawai'i state burial law: to that end, that the SHPD produce a written statement defining their position on this issue
NHHPC	Concern that the treatment determination for previously identified burials be expedited faster than the 45 day maximum defined by HAR 13-300-33(f)
NHHPC	The importance of determining treatment protocol (how to prepare the <i>kapa</i> , basket, etc.)
NHHPC	One NHHPC member specifically expressed opposition to the relocation of <i>iwi kūpuna</i>
NHHPC	Expressed interest in whether cultural monitors would be utilized
SHPD and OHA	Need for the protocol to clearly state that isolated, disarticulated human skeletal remains not in a burial context are not “burials” under Hawai'i state burial law
Hawaiian Kahu	That lineal/cultural descendents should decide how to take care of burial finds, including the selection of reinterment sites
Royal Order of Kamehameha I	That reinterment sites should be visible as a way of honoring the <i>kūpuna</i> and keeping knowledge of the burials alive for future generations
Hawaiian Kahu	That a combination of traditional and Christian burials practices have served in the past with the Queen Street burial ceremony, in which remains were wrapped in black <i>kapa</i> but buried in accordance with Christian practices
Aha Hipu'u	That the reinterment sites need to be identified proactively
Hawaiian Kahu	That the “ali'i” concept should be followed as that is the Hawaiian way

Agency/Group/Individual	Issue/Request
Kamehameha Schools	Advised that trying to force a middle ground between extremely divergent views regarding the treatment of <i>iwi</i> is not a helpful approach. Best approach is to be proactive, reach out to all parties and view points with respect, and take the time to build communication and trust
Kamehameha Schools	Advised to be transparent and flexible: never say “this is a done deal” – need to be adapting and constantly conversing
Kamehameha Schools	Advised about the need to clarify an understanding of roles
Ms. Dee Dee Herron	That she preferred the use of <i>kapa</i> cloth for wrapping burials rather than muslin cloth
Ms. Dee Dee Herron	That burials should be left in place if possible, even if that required that they be preserved under roadways, but in certain circumstances it would be safer and appropriate to reinter in a site immediately adjacent to the original burial
Ms. Dee Dee Herron	That any information dissemination about AIS burial finds include any applicable LCA numbers and the TMK information
Mr. Michael K. Lee	That all funerary items (<i>moepu</i>) such as <i>ki'i</i> (images) remain with the burial and not be separated
Ms. Kilinahe Keliinoe	That any and all <i>iwi kūpuna</i> identified during the AIS be regarded as previously identified burials, which fall under the jurisdiction of the OIBC. No <i>iwi kūpuna</i> should be removed without notification from the OIBC or the SHPD; however, the SHPD does not have exclusive authority to remove any <i>iwi kūpuna</i> without first notifying the entire OIBC.
Ms. Kilinahe Keliinoe	That any and all <i>iwi kūpuna</i> should be preserved in place
Ms. Kilinahe Keliinoe	That she be notified when testing begins and ends in Phase 4 and is kept abreast of test sites
Ms. Kilinahe Keliinoe	That preservation treatment and protocol be in effect prior to and during construction activities
Ms. Kilinahe Keliinoe	That a briefing on the history of the area and burial site protection protocol for construction supervisors and crews be provided prior to any and all ground-disturbing activities in the Phase 4 area

Agency/Group/Individual	Issue/Request
Ms. Kilinahe Keliinoe	That an archaeological monitor and a cultural monitor be present on-site during all ground-disturbing activities. She suggests that his grandmother, P. Ka'anohi Kaleikini, be the cultural monitor
Ms. Kilinahe Keliinoe	That both the archaeological monitor and cultural monitor have the authority to stop work in the vicinity of any findings immediately, so that documentation can proceed and appropriate treatment can be determined
Ms. Kilinahe Keliinoe	That the cultural monitor be allowed to preside over private cultural services with the <i>iwi kūpuna</i> prior to their being covered
Ms. Kilinahe Keliinoe	That adequate buffers are placed around any burial sites
Ms. Kilinahe Keliinoe	That in the event of inadvertent burial discoveries, HRD 6E 43.6 will be referred to. Also that a cultural monitor be on hand to administer cultural protocol until a determination is made regarding the inadvertent burial discoveries
Ms. Kilinahe Keliinoe	That removal of any remains shall be determined in consultation with the SHPD/DLNR, the OIBC, recognized cultural and lineal descendants, the OHA, and Hui Malama I Na Kupuna O Hawai'i Nei, and shall be overseen by a qualified archaeologist and a mitigation plan shall be prepared
Ms. Kilinahe Keliinoe	That if any <i>iwi kūpuna</i> are to be relocated, the cultural monitor, along with any descendants called to assist, will take the <i>iwi kūpuna</i> to the closest enclosed trailer or office and wrap the <i>iwi kūpuna</i> in kapa and place the wrapped <i>iwi kūpuna</i> in <i>hina'i</i> , then tie with <i>kaula</i> . The <i>puolo</i> will then be placed in an air conditioned curation trailer used exclusively for <i>iwi kūpuna</i> , until final reinterment. The material required for wrapping <i>iwi kūpuna</i> (<i>kapa</i> , <i>hina'i</i> , and <i>kaula</i>) should be gathered before the AIS begins in the Phase 4 area
Ms. Kilinahe Keliinoe	That reinterment should take place sooner rather than later
Ms. Kilinahe Keliinoe	That burial site locations and landscaping designs should be presented to cultural descendants as soon as possible for commenting

Agency/Group/Individual	Issue/Request
Ms. Kilinahe Keliinoe	That any and all <i>moepu</i> (burial items) found on or in close proximity to any and all <i>iwi kūpuna</i> or burial site be placed within the <i>puolo</i> with the <i>iwi kūpuna</i> or wrapped separately and reburied alongside the <i>puolo iwi</i> . Also, no <i>moepu</i> should be kept by any city or state entity or CSH
Ms. P. Ka'anohi Kaleikini	That the consultation process for a burial treatment plan is too short, and the timeline should be extended
Ms. P. Ka'anohi Kaleikini	That she would like clarification on where Phase 4 of the project ends, whether at Ala Moana Shopping Center or the Hawai'i Convention Center
Ms. P. Ka'anohi Kaleikini	That she would prefer face to face meetings over written correspondence for future discussions
Ms. P. Ka'anohi Kaleikini	That she and others be provided with a physical address to which input regarding burial treatment protocol can be sent. Responses to these letters should be received within 30 days. Additionally, all comments and responses should be included in the final AISP
Ms. P. Ka'anohi Kaleikini	That potential relocation sites should be used for inadvertent discoveries rather than previously identified finds, as descendants will push for preservation in place during the AIS
Ms. P. Ka'anohi Kaleikini	Consultation for potential relocation sites should include descendants and consulting parties, including: a Native Hawaiian <i>kahu</i> , the Order of Kamehameha, OHA, and the OIBC
Ms. P. Ka'anohi Kaleikini	That any relocation sites be as close to the original burial location as possible and within the same <i>ahupu'a</i>
Ms. P. Ka'anohi Kaleikini	That the City Parks option is the best for relocation sites
Ms. P. Ka'anohi Kaleikini	Regarding the combined use of both traditional and Christian burial practices, that traditional protocols precede any Christian practices

Agency/Group/Individual	Issue/Request
Ms. P. Ka'anohi Kaleikini	Regarding LCA 6450:1: 1. Request that as state recognized direct lineal descendents of this LCA, that her 'ohana be present as cultural monitors during all excavation in this area; 2. That any <i>iwi kūpuna</i> or <i>moepu</i> found in this area be handled exclusively by her 'ohana; and 3. That any re-interment for inadvertent finds be relocated as quickly as possible and as close as possible to the original burial site. To this end, a re-interment site should be identified as soon as possible
Van and Kathryn Diamond	The need for accurate records for any relocation of burial finds
Ms. K. Diamond	That protocol should be by areas rather than one protocol covering all
Ms. K. Diamond	That a vocal minority should not be construed as the majority
Ms. K. Diamond	That other ethnic groups, not just Hawaiians, may be affected by burial finds and also need to be respected
Ms. K. Diamond	The need for an appropriate and safe curation area for any finds
Ms. U'ilani Kapu	That any <i>iwi</i> encountered should not be moved quickly or be exempt from any Hawai'i state burial laws
August 12 th community meeting	That the consultation list include interested parties and individuals as well as the SHPD recognized descendents list
August 12 th community meeting	The need for the broadest possible community dialogue
August 26 th community meeting	The need to find a representative(s) for each <i>ahupua'a</i> who will provide the cultural ceremonies and interaction with any <i>iwi kūpuna</i> finds, i.e. to create a "kuleana map" for the project corridor
September 15 th community meeting	The need for the selection of specific caretakers, or <i>kahu</i> , who would care for the spiritual aspects of the <i>iwi kūpuna</i> , or their well-being
September 15 th community meeting	That any bone or bone fragment (in a non-burial context) should be considered a burial and treated as such

Agency/Group/Individual	Issue/Request
September 15 th community meeting	That Hawaiian families' ties or interests cannot be restricted to just one <i>ahupua'a</i> or discrete geographic area, since families could be widespread and connected to several areas
September 15 th community meeting	That all <i>iwi kūpuna</i> discoveries should be treated with the respect due to <i>ali'i</i> . That <i>koa</i> boxes and <i>kapa</i> wrap be utilized during protocol treatment
September 15 th community meeting	That placing different <i>iwi kūpuna</i> finds together in one common relocation area should be avoided as it could be very destructive for the spirits or their descendents

Appendix C OHA Consultation Response Letter



FAX (808) 594-1865

STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
 711 KAPI'OLANI BOULEVARD, SUITE 500
 HONOLULU, HAWAII 96813

HRD11/2156W

September 8, 2011

Leslie T. Rogers, Regional Administrator
 Federal Transit Administration, Region IX
 201 Mission Street, Suite 1650
 San Francisco, CA 94105

Re: Programmatic Agreement
Honolulu High-Capacity Transit Corridor Project
Island of O'ahu

Aloha e Administrator Rogers,

The Office of Hawaiian Affairs (OHA) is in receipt of a draft *Consultation Protocol for Iwi Kūpuna Discovery During the Archaeological Inventory Survey for the City Center (Construction Phase 4) of the Honolulu High Capacity Transit Corridor Project* (Cultural Surveys Hawai'i, Inc. July 2011).

We offer the following comments on this draft consultation protocol (protocol):

Background

Preparation of the protocol is a requirement of Stipulation III(B)(4) of the Programmatic Agreement (PA) executed for the Honolulu High-Capacity Transit Corridor Project (the undertaking) on January 18, 2011.

The PA intends for the protocol to establish a framework for consultation with appropriate parties regarding the treatment of any iwi kūpuna (native Hawaiian human skeletal remains) identified during the archaeological inventory survey (AIS) of Phase 4¹ of the undertaking. At a minimum, the PA requires that the protocol address "a process for communication about any identified iwi kūpuna, definitions that will be applied to the Project, identification and inclusion of lineal and cultural descendants and NHOs, and workflow actions prior to and upon identification of iwi kūpuna during the AIS". The Federal Transit Administration (FTA) will approve the final protocol.

¹ Phase 4 of the undertaking extends approximately 4.3 miles from Kalihi Stream to Ala Moana Center and is generally recognized as traversing through an area with a high potential for encountering iwi kūpuna.

Capital Transit Administration, Region 1A
September 8, 2011
Page 2 of 5

The PA recognizes that nothing in the protocol shall supersede the requirements of Chapter 6E, Hawaii Revised Statutes (HRS) as implemented by Chapter 13-300, Hawaii Administrative Rules (HAR).

It is our understanding that during the development of the protocol, the FTA authorized its scope to be expanded beyond what is required in the PA.² The current scope of the protocol now extends to any burial site or iwi kūpuna identified within Phase 4 of the undertaking, and is inclusive of those identified during the AIS and those subsequently identified during undertaking construction activities involving ground disturbance.

OHA supports the scope of the protocol being expanded to include any burial site or iwi kūpuna identified within Phase 4 of the undertaking. The final FTA approved protocol certainly has the potential to establish a framework to ensure accurate information regarding burial sites and iwi kūpuna is transmitted to all appropriate parties in a timely manner. We look forward to seeing this potential fully achieved as it will contribute to facilitating the Chapter 6E, HRS and Chapter 13-300, HAR process and informed decision making.

Definition of a "Burial Site"

Section 3.2.1 of the protocol contains an extensive discussion on the definition of a "burial site". This discussion questions whether any iwi kūpuna identified during the AIS in what the protocol describes as being "isolated" or "disarticulated" context within "imported fill material" or "disturbed local sediment" should be classified as a "burial site". Chapter §6E-2, HRS defines a "burial site" as:

any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods are interred, and its immediate surrounding archaeological context, deemed a unique class of historic property and not otherwise included in section 6E-41

The protocol (page 23) seems to place an added emphasis on whether the archaeological context surrounding identified iwi kūpuna provides incontrovertible evidence of "purposeful interment" as opposed to isolated or disarticulated iwi kūpuna identified within imported fill material "which clearly does not constitute purposeful interment, but rather reflects the results of past disturbance".

Section 5.1(4) of the protocol describes a process where following consultation between the Department of Land and Natural Resources-State Historic Preservation Division (SHPD), City and County of Honolulu (the City) and a designated member of the OIBC, iwi kūpuna identified during the AIS and determined to be in a "non-burial context" will be disinterred and placed in a temporary curation facility. This process seems to support the assertion in the protocol (page 22) that the SHPD has "expressed the interpretation that disarticulated human skeletal remains not from a burial site context are not considered a burial under Hawai'i state

² The PA only requires the scope of the protocol address consultation for any iwi kūpuna identified in the archaeological inventory survey for Phase 4 of the undertaking.

Capital Transit Administration, Region 1A
September 8, 2011
Page 3 of 5

burial law and therefore are not subject to OIBC jurisdiction". OHA respectfully requests that if this is the current position or policy of the SHPD, we would like to see it confirmed in writing.

The discussion in Section 3.2.1 and process described in Section 5.1(4) of the protocol along with the assertion (which we believe is unsubstantiated at this time) of the SHPD's interpretation of a burial site could set a precedent which might be applied throughout the State of Hawai'i. For this reason, we believe that the processes established in the protocol must be in compliance with the current requirements of Chapter 6E, HRS and Chapter 13-300, HAR in order to avoid any ambiguity or the appearance of arbitrary decisions. Thus, we advocate that any iwi kūpuna, regardless of context that are identified during the AIS be treated as "previously identified" as defined by Chapter §13-300-2, HAR and under the jurisdiction of the OIBC. Final disposition and appropriate treatment of these "previously identified" iwi kūpuna shall be proposed in a burial treatment plan developed in consultation with the parties described in Chapter §13-300-33, HAR.

Inadvertent Discoveries

Section 5.2 of the protocol also attempts to apply the assertion that isolated or disarticulated iwi kūpuna identified subsequent to the AIS during undertaking construction activities do not constitute a "burial site". Thus, the protocol proposes that not all of the requirements of Chapter §6E-43.6, HRS and Chapter §13-300-40, HAR will apply to the inadvertent discovery of "non-burial site" iwi kūpuna. Chapter §6E-2, HRS defines "human skeletal remains" as:

the body or any body part of the body of a deceased human being

Chapter §13-300-2, HAR defines an "inadvertent discovery" as:

the unanticipated finding of human skeletal remains and any burial goods resulting from unintentional disturbance, erosion, or other ground disturbing activity

OHA sees these definitions as clearly requiring that any human skeletal remains, regardless of context that are encountered during undertaking construction activities be classified as an inadvertent discovery and treated in full compliance with the current requirements of applicable HRS and HAR. As we have already mentioned, if the processes currently described in the protocol are applied, they have the potential to set a precedent which might be applied throughout the State of Hawai'i. OHA advocates that the protocol be revised to ensure full compliance with current HAR and HRS as the PA requires.

Identification and Notification of Lineal and Cultural Descendants, and Native Hawaiian Organizations

OHA applauds the efforts which have been made to generate a contact list (Appendix A) of lineal and cultural descendants (descendants), and Native Hawaiian Organizations (NHO) who

Archaeological Administration, Region 1A
September 8, 2011
Page 4 of 5

should be notified of the identification of iwi kūpuna during the AIS or those “inadvertently discovered” during undertaking construction activities. We sincerely appreciate the affirmation in Section 4.1 of the protocol that the final contact list will be “inclusive” of all parties and that an “opt-in” procedure will be provided for descendants and NHO so that they can be added to the contact list, or limit notifications to specific geographical areas.

OHA concurs with the proposal in the protocol that efforts will be made to ascertain the method of communication (i.e. email, U.S. mail or telephone) preferred by each descendant and NHO on the contact list which will be included in the final FTA approved protocol. The ability to efficiently notify and communicate with appropriate parties on matters related to iwi kūpuna while working to determine appropriate disposition is always a challenge and the contact list may be helpful in this regard.

Re-interment Sites

We agree with the summary in Section 6 of the protocol that OHA has recommended advance identification of sites which can be used for the re-interment of iwi kūpuna. To be clear however, this recommendation is not based on our desire to see the establishment or designation of re-interment sites (sites) used as justification for the proposed relocation of iwi kūpuna identified during the AIS or “inadvertently discovered” during undertaking construction activities. We know that securing the land to establish sites takes time. The lack of sites is often an issue which prevents the timely re-interment of relocated iwi kūpuna and can result in their temporary curation for undetermined lengths of time. This is why proactive efforts to identify sites before the AIS and initiation of undertaking construction activities is warranted.

OHA questions whether the Nahinu family has been consulted on the possible use of the existing re-interment site at the Kalihi-Pālana Bus Facility discussed in Section 6.2.2 of the protocol. It is our understanding that this site is specifically associated with the members of the Nahinu family and the discussion in the protocol seems to focus more on whether there is “room for expansion” to accommodate additional iwi kūpuna, as opposed to the desires and wishes of the Nahinu family.

Conclusion

OHA recognizes that in the two decades since Chapter 6E, HRS was enacted and the fifteen years since Chapter 13-300, HAR was adopted, the numerous instances of iwi kūpuna being encountered in an isolated and/or disturbed context have never been addressed by amending then laws to provide a process other than those currently required to determine final disposition and appropriate treatment. At the federal level, the Native American Graves Protection and Repatriation Act (NAGPRA) implementing regulations (43 CFR) provide a process which can be applied in these situations.³ This NAGPRA process could be considered should proposed amendments to the HRS and HAR move forward. Until that time, the current requirements of the HRS and HAR must be fully complied with. The processes and interpretations proposed in the current draft of the protocol have the potential to set a precedent that might adversely affect the Hawaiian people and we advocate that the FTA ensure it is revised accordingly.

³ See 43 CFR §10.3-106 which reference a “written plan of action”.

CONSULTATION PROTOCOL, REGION IX
September 8, 2011
Page 5 of 5

The efforts to develop a contact list that will be used to ensure timely and efficient communication with lineal and cultural descendants, and Native Hawaiian Organizations has the potential to set a precedent that could positively affect the consultation process. We applaud all involved in this effort and look forward to seeing the contact list and preferred methods of communication finalized in the protocol approved by the FTA.

We have no additional comments at this time. Thank you for the opportunity to provide comments. Should you have any questions, please feel free to contact me or have your staff contact Keola Lindsey at (808) 594-0244 or keolal@oha.org.

'O wau iho nō me ka 'oia'i'o,



Clyde W. Nāmu'o
Chief Executive Officer

- C: Board of Trustees, OHA
William Aila, Jr., State of Hawai'i Historic Preservation Officer
Pua Aiu, Administrator, State Historic Preservation Division Administrator
Matt McDermott, Cultural Surveys Hawai'i (via email)
Kawika McKeague, O'ahu Island Burial Council Chairman (via email)
Barbara Gilliland, Parsons Brinckerhoff (via email)
Rear Admiral Dixon R. Smith, Navy Region Hawai'i Commander
John M. Fowler, Advisory Council on Historic Preservation Executive Director
Wayne Y. Yoshioka, City and County of Honolulu
Christine S. Lehnertz, National Park Service
Ted Matley, FTA
Faith Miyamoto, City and County of Honolulu

Appendix D Consultation E-mail

D.1 September 24, 2011: Paulette Ka'anohiokalani Kaleikini

From: pkaleikini@hawaii.rr.com
Sent: Sunday, September 25, 2011 9:21 AM
To: mmcdermott@culturalsurveys.com; pkaleikini@hawaii.rr.com
Subject: Re: Comments on the Draft AIS for Phase 4 of the Rail Project

My 'ohana wishes to reiterate that the entire lands of Royal Patent 6450:1 located in the 'ili of Mokauea Kalihi which originally consisted of more than 737.76 acres belonged to Kaunuohua and William Luther Moehonua. We are state recognized direct lineal descendants to these patentees. Our 'ohana will request to be cultural monitors at this site when testing and construction begins. We will request that any/all iwi kupuna (previously identified or inadvertent), and moepu found on these lands be handled exclusively by our 'ohana and that a reinterment site for inadvertent finds be located sooner than later, in the closest proximity possible to where they were found for a speedy reburial.

----- pkaleikini@hawaii.rr.com wrote:

Aloha Matt,

Kalamai, I couldn't get my computer to send this draft statement as an attachment and I didn't have time to run and have someone do it for me.

I know time is of the essence, hope it is not too late. Let me know. Here goes :

My comments on the draft Archaeological Inventory Survey are as follows:

Page 37; Section 6 : Proactive Consideration of Possible Iwi Kupuna Relocation Areas :

Any/all iwi kupuna found during the AIS will be previously identified and descendants will press for preservation in place. The areas suggested as relocation burials sites can be used for inadvertent discoveries. The City should take a proactive approach toward providing redesign options should previously identified burials be discovered in the Phase 4 area. As previously identified burials, the City would benefit from a redesign done now should the Oahu Island Burial Council vote to preserve in place any/all burials should any be discovered. The City could always ask the Council to reconsider. If the Council chooses not to reconsider then the City can request a contested case. Either way, the City has reconsideration and appeal options, the iwi kupuna would have none aside from the voices of the 'ohana. It is serious that the City present a redesign option for Phase 4 of the transit project otherwise we will be looking at another Walmart and Ward Village (General Growth). In September 2009, I asked City and federal officials to make me a consulted party pursuant to section 106 of the National Historic Preservation Act for this transit project. Consultation regarding these relocation burial sites for inadvertent discoveries should have included descendants (of which there are many) along with the consulting parties; 1) a Native Hawaiian kahu 2) Order of Kamehameha 3) Office of Hawaiian Affairs and the 4) Oahu Island Burial Council.

Please include the name of the Native Hawaiian kahu in the final AIS.

Section 6.1 : Considerations in Selection of Possible Relocation Areas :

Again, of importance is to note that these relocation sites will be for inadvertent discoveries and that the area for consideration be close to where the iwi were originally interred with attention to keeping the iwi in the same traditional area (within the same ahupua'a).

Section 6.2 : Possible Iwi Kupuna Relocation Area Suggested for Preliminary Consideration :

1) Transit Stations, 2) Existing iwi kupuna relocation burial sites, and 3) City Parks. Transit Stations are definitely not favorable because these sites will not be available for prompt immediate re-interment.

The existing sites that were recommended are either full with burials or the land belongs to a private owner or the State and would probably not allow for immediate re-interment.

Since this is a City project, it is the City's kuleana and the City Parks have all the advantages, would be readily accessible and the most acceptable as relocation burial sites.

Appendix A HHCTCP City Center Consulting Contact List :

Under PA type, some members of my 'ohana are listed as INDIVIDUAL; have this corrected and list the following names as Claimant/Descendant for the final AIS :

Angela Keaweamahi
 April Leimomi Keaweamahi
 Benjamin Kanohokula III
 Haloa Kaleikini
 Hokunani Kanohokula
 Jimmy Medeiros
 Paulette Ka'anohiokalani Kaleikini
 Kilinahe Keliinoi
 Ku'uipo Keaweamahi
 Leilani Murphy
 Lilinoe Keaweamahi
 Lokahi Kanohokula
 Mahiaimoku Kaleikini
 Maile Keaweamahi Kanohokula
 Makanoa Keaweamahi
 Michael Keaweamahi Manufeki
 Michael Lani Keaweamahi Jr.
 Moehonua Kaleikini
 Noelani Keaweamahi
 Iaukea Kawainui Keaweamahi

My 'ohana are State recognized cultural descendants to iwi kupuna found in Kaka'ako.

I would like to remind the City that one of the critical tenets of Native Hawaiian traditional and customary practices is the obligation to ensure that iwi kupuna remain undisturbed and that they receive proper care and respect. Protection of iwi in place and prevention of relocation is a traditional and customary practice of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778. One of the kuleana of myself and 'ohana is to malama iwi kupuna and burial sites. We ensure that these sites are not disturbed. The unnecessary removal of iwi cause us great pain and suffering; kaumaha.

I rely on information contained in archaeological inventory surveys to advocate for the protection of iwi. Although the law may not allow me to unilaterally decide the fate of iwi kupuna, I have filed an action to ensure that all proper procedures are followed for the City's rail project, which will impact iwi. This archaeological inventory survey will help me meet my kuleana to ensure the appropriate protection of iwi. Every act of uncovering burial remains is an alteration of a burial site.

I am and my 'ohana are familiar with burials in Kaka'ako. In Kaka'ako alone we have malama twenty-five iwi kupuna at the Queen Street extension project; twenty- seven burials at Kewalo Development (Alexander and Baldwin); sixty-three burials at the Wal-Mart site on Ke'eaumoku Street; over sixty burials at the Ward Villages (General Growth Properties). Phase 4 of the City's transit project runs through this same general area.

On January 30, 2009, I commented via letter, on the draft environmental impact statement for the rail project. In my comments, I notified the Defendant Wayne Yoshioka, Defendant Puaalaokalani Aiu, and others that the proposed transit project would impact iwi. In this same letter, I pointed out that an archaeological inventory survey should be prepared prior to decision making.

On August 25, 2010, I again wrote Defendant Wayne Yoshioka and Defendant Puaalaokalani Aiu, pointing out that an archaeological inventory survey needed to be prepared prior to decision making and construction, and that state law did not allow for any sort of "phased approach" to these studies .

On January 26, 2011, in written and oral testimony, I attended a City Council meeting and urged the Council to deny the special management area permit for the transit project because an archaeological inventory survey for the entire corridor had not yet been completed (violating HRS 6E-42 and its implementing rules).

Researching the State Office of Environmental Quality Control's (QEQC) website, I found countless final environmental impact statements of projects in all areas of Oahu and each project contained an archaeological inventory survey that disclosed the full impact of archaeological sites, including burials. These projects are no different from the City's transit project so how did the City's transit project not require and be allowed to move forward without an AIS first being completed.

I filed a chapter 91 appeal that resulted in the Hawai'i Supreme Court decision KALEIKINI v. Thielen, 124 Hawai'i i, 26, 237 P.3d 1067, 1092, (2010). This appeal was raised after the decision of the Oahu Island Burial Council met to decide the fate of the iwi in the area where General Growth Properties proposed to build the Ward Villages Shops Project. Majority of the Council voted to relocate the iwi. Those members who voted to relocate the iwi were put in the (false) position of having to chose : leave the iwi in the ground where pile driving could damage them or relocating them. Because the developer had already spent millions of dollars, its construction plans did not allow for a lot of redesign options where the iwi could be preserved in place. This is the result of what happens to iwi kupuna at projects where archaeological inventory surveys are not completed before construction begins (violating HRS 6E-8 and it's implementing rules). The City's attorneys told Judge Chang that the rail would be realigned in areas of Phase 4 if any iwi kupuna were found during the AIS. When construction gets to Phase 4, the options of what the Oahu Island Burial Council can do in regards to preserving and protecting the dignity of the burials will be narrow. It would take the full support of the Council to force realignment of this destructive mammoth but it is not impossible.

Paulette Kaanohiokalani Kaleikini-descendant/cultural practitioner